A Linguistic Analysis of Some Problems of Arabic-English Translation of Legal Texts, with Special Reference to Contracts

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INTRODUCTION

There is an inseparable relationship between language and law. In any society, rules of law are written rules. Law and language are closely related. Law needs language. Law may even be influenced by language. Lawyers are like any other users of language. Legal translation from one language to another cannot be performed without regard to the cultural differences between the two legal systems. The areas, in which issues arising from the drafting of legal language have attracted most attention to date, are the fields of legal translation.

By means of written language, constitutions come into existence, laws and statutes are enacted, and contractual agreements between contracting parties take effect. The legal implications of language continue to extend far beyond the courtroom – to interactions between police and suspects, to conversations between lawyers and their clients, to law enforcement's use of surreptitious recordings, and to such unlawful speech acts as offering a bribe, or issuing a threat, or making a defamatory statement. A little reflection suffices to reveal just how essential language is to the legal enterprise.

The approaches to legal translation have been mostly oriented towards the preservation of the letter rather than effective rendering in the target language, legal texts having always been accorded the status of "sensitive" texts and treated as such. A challenge to the unquestioned application of a "strictly literal" approach to legal translation came only in the nineteenth and early twentieth centuries (Sarcevic, 2000, p. 24).

This book aims to provide a relatively comprehensive description of legal language in general and an application was done to the main features of the language of contracts and how each translator approached problematic areas of legal translation in the two contracts.

PART 1

CHAPTER ONE

INTRODUCTION: THEORETICAL PRELIMINARIES

There has been growing attention paid to the interdisciplinary study of the language of law. This book explores the nature and features of this relatively new discipline, including its relationship to relevant areas such as law and linguistics, in addition to exploring the characteristics of legal English and Arabic within their legal contexts and the difficulties and problems of translation. Although the study of language and law has been advancing, it nonetheless remains a relatively marginal field.

There is an inseparable relationship between language and law. In any society, rules of law are written rules. Lawyers are like any other users of language. Accuracy of wording is a desirable and important attribute for a good lawyer. On the other hand, lawyers sometimes attract both distrust and derision for their supposed abuses of ordinary language, such as the deployment of archaic terms, over-elaborate syntax and high-sounding expressions. The areas in which problematic issues arise from the drafting of legal language are the field of legal translation.

Legal translation is considered by many writers to be extremely challenging. Particular challenges are posed by the specificity of legal language and, in particular, the system-bound nature of legal terminology and differences between the common law and civil law systems. Weston adds that "the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons" (1983, p. 207).

Legal language has a problem inherent in language, due to both its flexibility and vagueness or due to detecting a link with the mentality of lawyers who are always keen to identify an unintended ambiguity in words or a loophole in documentation.

Legal translators are obligated to not only speak the target and the source languages fluently, they must be closely familiar with the law and the legal system in the country where the translated text originated, and the country for which the translation is being prepared. Legal translation requires usage of methodology according to the challenges it poses;

challenges that are different from the ones connected to other types of specialized translation.

> 'Specialized translation can be divided into two categories: technical and institutional translation. Technical translation is non-cultural and therefore universal; therefore the terminology is not culture dependent; it is mostly known internationally. Institutional translation, which includes legal translation, is culture dependent; making it typical for particular culture' (Newmark, 1988, p. 151).

Legal translation is a specialized, culture dependent translation, and it is the legal translators" task to stay faithful to the intent, tone, and the format of the original, source legal document, yet make the text clear and understandable to the audience, without taking any creative liberty, which is considered unacceptable at all in the formal constraints of legal language.

Two areas in law and language are of interest. The first one is the interest in the use of language in law, while the second one is the interest in using philosophy of language to address problems of the nature of law. Some problems in each area will be outlined and the start is with a brief historical note on the linguistic preoccupations of legal philosophers.

1.1 Objective of the Study

This research aims to provide a description of legal language, including its development and its distinctive features. It also deals with the characteristics of legal text type in Arabic and in English with special reference to the language of contracts and the problems of translation between the two languages.

1.2 Research Questions

The research questions are focused primarily on the overall quality of the translations and specifically on the translational way-outs and solutions of some problematic points and the linguistic analysis of the two translated contracts, which are described when analyzing these two texts and in what ways have legal translators from Arabic into English and vice versa made deviations in meaning and the features of the legal language.

1.3 Significance of the Study

According to Jersy Wroblewski (1988) (cited in El Achkar et all., 2005), legal language comes from natural language to which specialized words and specific meanings corresponding to the legal nature of that discourse are added. The difference between natural language and legal language is mostly semantic, not syntactic. It depends on the words as well as on their specific meanings.

As inappropriate translation of a text may lead to major problems or lawsuits or may also incur a loss of money, only professional translators specializing in translating legal texts are supposed to be competent enough to translate such documents from the source language (SL) to the target language (TL). Legal translators often consult bilingual law dictionaries, encyclopedias and/or websites. Most forms of legal texts require clearly and accurately defined rights and duties for all. It is very important to ensure precise correspondence of these rights and duties between the source text and the translated target text.

Legal translators must therefore be competent in at least three key areas: first, comparative law that requires the possession of a basic knowledge of the two legal systems for the SL and the TL. Secondly, specific terminology that requires the translator to be familiar with the specific and accurate term of the particular legal field dealt with in the SL and the TL texts. Thirdly, legal writing style which requires the professional translator to be highly competent in the specific legal writing style of the translated target language.

In the legal field, where legal terms are grounded in country-specific legal systems, legal translators face numerous factors that influence their ability to translate certain terms, which will inevitably lead to a major translation problem.

Most of the significant reference textbooks on legal translation are solely devoted to questions of terminology, while characteristic considerations tend to be ignored.

History is filled with examples where ideas have been lost in translation, and often with tragic consequences. Therefore, this research is important, as far as people who work in the field of legal translation and legal systems are concerned. In order to avoid unintentional consequences of inappropriate legal translation, it is essential to understand the features of legal language and how inaccuracies have occurred in the past, and how they can be avoided in the future.

1.4 Organization of the Study

This book consists of two parts. The first part consists of three chapters. Chapter one includes the introduction, historical background, significance of the study, research questions and related literature review. Chapter two introduces the language of law in general. Chapter three deals with the translation of legal texts and documents and the sources of difficulties in translating legal documents, as well as legal language features and characteristics. Chapter four defines the contract as a subfield of law and deals with the stylistic specifics of contracts in general. The second part of this book deals with contracts as a sub-genre of legal texts. Chapters five introduces and analyzes the empirical study. The empirical study is based on an analysis of two contract translations by two different legal translation agencies. It seeks to find out the main points of problems; whether it is the understanding of the SL, finding an appropriate translation way-out, or the style and understandability of the TL text. Conclusions and recommendations follow in Chapter six.

1.5 Review of Literature

Translating legal documents is regarded by many researchers as one of the most arduous endeavors; research on legal translation between English and Arabic is predominantly restricted to purely semantic or syntactic issues. For instance, AbuGhazal (1996) outlined a number of syntactic and semantic problems in legal translation from English into Arabic, by analyzing graduate students translations. He primarily aimed at detecting the linguistic and translation problems facing translators in general.

Bentham (1782) developed a radically empiricist theory of the meaning of words, which supported his utilitarianism and his legal theory. He wanted to abandon what he considered to be a nonsensical mythology of natural rights and duties. Linguistic acts struck him as respectable empirical phenomena, and he made them an essential element of his theory of law. He based his "legal positivism" on his claims about the meaning and use of words. Language had not been especially important to the natural law theorists whose views Bentham despised, so philosophy of language has no special role in explaining the nature of law. Bentham (1782), by contrast, needed the "sensible" phenomenon of a perceptible, intelligible linguistic act for his purpose of expounding the nature of law by reference to empirical phenomena.

In 1994, Hart's book "The Concept of Law" raised issues that have occupied legal philosophers ever since and at the same time; he borrowed

J.L. Austin's method of "using a sharpened awareness of words to sharpen our perception of the phenomena" (Hart, 1994, p. 14). That method sets the background for the two problems: "Language and the normativity of law", and "The Semantic Sting". Hart's observations about the use of language in law were the basis of an innovative approach to the challenge of explaining the normativity of law, a problem for legal theory that can be clearly seen, Hart claimed, in the faulty explanation of normative language that had captivated Bentham.

Ronald Dworkin (1968), has opposed Hart's theory of law on the basis that his whole approach to legal philosophy is undermined or "stung" by his approach to words, that he wrongly thought "that lawyers all follow certain linguistic criteria for judging propositions of law" (Dworkin, 1986, p. 45). That is Dworkin's "semantic sting" argument, an argument in the philosophy of language that has set an agenda for much recent debate in philosophy of law.

Mellinkoff (1963) was concerned with what the language of law is and investigated the history of legal language, and brought the language of law down into practice.

In their book, Crystal and Davy (1969) devoted one chapter to the language of legal documents, supported with examples taken from an insurance policy and a purchase agreement. They wrote that "of all the uses of language, it [legal language] is perhaps the least communicative, in that it is designed not so much to enlighten language-users at large as to allow one expert to register information for scrutiny by another" (p. 112). A legal text for them exhibits a high degree of linguistic conservation, included in written instruction such as court judgments, police reports, constitutions, charters, treaties, protocols and regulation (p. 205). They described legal texts as formulaic, predictable and almost mathematic.

Newmark (1982) is another theorist of general translation to comment on legal translation. He noted a difference in the translation of legal documents for information purposes and those which are "concurrently valid in the TL [target language] community." Concerning "foreign laws, wills, and conveyancing" translated for information purpose only, Newmark suggested that literal or semantic translation, in his own term, is necessary. On the other hand, he stressed that "the formal register of the TL must be respected in dealing with documents that are to be concurrently valid in the TL community." In Newmark's view, such translations require the communicative approach that is target language-oriented (Newmark, 1982, p. 47). In this regard, Newmark is one of the few linguists to recognize that the status of a legal text is instrumental in determining its use in practice.

Emery (1989) explored the linguistic features of Arabic legal documentary texts and compared them with their English counterparts. Emery ended up recommending that trainee translators should develop a sense of appreciation of the structural and stylistic differences between English and Arabic discourse to help produce acceptable translations of legal documents. Though he only made limited inroads into the area of legal translation theory or practice, Emery's article is actually one of the very few works that investigated general features of Arabic legal language, an area of research that has inexplicably been disregarded by Arab translators and theorists.

Al-Bitar (1995) illustrated how legal language differs from other common-core English varieties. In her study, she studied twelve bilateral legal agreements and contracts signed during the years 1962-1993. She investigated two main areas of nominal group in addition to other grammatical units: complexity of the noun phrase and type of modification. Her main conclusions were that the differences lay in the heavy use of complex noun phrases and the high frequency of whrelative clauses and prepositional relative clauses as post-nominal modifiers of the finite in legal texts (pp. 47- 62).

House (1997) distinguished between two basic types of translation strategies: overt translation in which the target text receivers are overtly not the same as the source text receivers, and covert translation in which the target text receivers are the same as the source text receivers. According to House, the latter group includes texts that are not addressed exclusively to the source texts receivers, such as commercial texts, scientific texts, journalistic articles … etc. (pp. 1997-194). Although House does not mention parallel legal texts, which would also belong to this group; in fact all special purpose texts would fall under her category of covert translation.

Hickey (1998) argued that any translation of a legal text must be able to affect its readers the way the ST was able of doing to its readers. She states that the translator must ask herself how the original text reader would have been affected and ensure an analogical TT[1] reader will be affected similarly by his reading of the text but not by any other means (pp. 224-225). Hickey failed to see that a TT might be directed towards different readers in a different context. In this case, it is pointless to pursue a similar effect on the part of the translator.

Hatim, Shunnaq and Buckley (1995) occupied themselves with listing legal texts and their model translations, without setting foot in the field of legal translation theory.

The above studies ignored the pragmatic factors related to legal discourse. Such an approach, which extensively stresses the sensitivity of legal texts, may contribute to the creation of misconceptions about legal translation. In other words, it helps depict it as a process of interlingual transfer (Sarcevic, 2000, p. 2) within an array of restrictions.

Sarcevic (2000), in her book which has a comprehensive survey of legal translation, wrote in connection with parallel legal texts, "While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice" (p. 71).

As Sarcevic (2000) indicated, "the basic unit of legal translation is the text, not the word" (p. 5). Terminological equivalence has an important role to play, but "legal equivalence" used to describe a relationship at the level of the text may have an even greater importance" (p. 48). The translator must be able "to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language" (pp. 70-71).

Dickins et al (2003) offered a progressive representation of various translation problems, accompanied by lots of practical work in developing underlying principles for solving the problems. Theoretical issues were discussed only in so far as they relate to developing proficiency in method. Although a wide range of texts were dealt with in this book, little attention was directed towards legal texts in the form of pedagogic practice within a framework of more general linguistic issues ignoring the peculiarity of legal texts.

Butt and Castle (2006) burrowed into the roots of traditional legal language and its peculiar characteristics that make legal documents aloof from its users. They proposed a step-by-step guide to drafting in the modern style, using examples from four types of legal documents: leases, company constitutions, wills and conveyances. Moreover, they emphasized the benefits of drafting in plain language and confirming the fruitfulness of its use. Like Mellinkoff (1982), they surveyed the reasons for the current alarming state of legal drafting, as well as provided guidance on how to draft well. Their book is the most recent addition to the Plain English Movement that is discussed in the next chapter. It argues that it is actually "safe" and constructive to break away from old ways of legal drafting into simpler, more communicative ones.

Making use of the available literature on pragmatics, the concept of legal equivalence, and the changing role of the translator, the study

scrutinizes the applicability to the translation of contracts through comparing and analyzing the translation under investigation.

1.6 Origins and History of Legal Language

Legal language has had its own historical development, which is parallel to, but is often independent of, the historical development of the rest of the English language. Ordinarily, languages change over time through use—words develop new meanings and old meanings are lost; archaic terms drop out of the language; grammatical structures shift to reflect changes in the status of competing dialects. But legal language develops many of its forms and meanings through a legal and not an ordinary linguistic process.

A good example of this is the legal meaning of "fresh" as in "fresh fish. "The lay person's understanding of "fresh fish"—based on the most common current meaning of the word "fresh," as it has developed--is likely to be "fish that was recently caught." But the legal definition, as set by regulations, is fish that has never been frozen, no matter when it was caught. It is the courts, legislatures, and government agencies, which decide the legal meanings of terms, not ordinary usage and historical change.

How did legal language get to be the way that it is? How did it develop? The answer to such questions is through the history of the language of lawyers that was mentioned in the Legal Language book by Tiersma (1999).

1.6.1 Celts, Anglo-Saxons, and Danes

The Celts

In "Legal Language", Tiersma (1999) mentioned that there are virtually no remnants of the legal language of the original Celtic inhabitants of England, although there are some indications that it was poetic and not particularly comprehensible for ordinary people, a theme that continues to resonate. (http://www.languageandlaw.org/NATURE. HTM)

The Anglo-Saxons

Tiersma (1999) also mentioned that the Anglo-Saxons pushed the Celtic language to the fringes of Britain. Some Anglo-Saxon words or

legal terms have survived until today, including "writ", "ordeal", "witness", "deem", "oath" and "moot". Words had an almost magical quality in Anglo-Saxon legal culture. Their law used alliteration and conjoined phrases, a practice that has, to a limited extent, survived to the present (as in "rest", "residue" and "remainder"). The increasing linguistic complexity of Anglo-Saxon laws led to more complicated legal language, suggesting that the complexity of legal language may to some extent simply reflect an increasingly complicated society. (http://www.language andlaw.org/NATURE.HTM)

Latin and the Advent of Christianity

Tiersma (1999) also added that Christian missionaries landed in 597 and (re)introduced Latin. Latin terms, that entered legal language in this period, include words like "clerk". One impact of Christianity was to encourage the use of writing, which was later to have a tremendous impact on the law. Although Latin was incomprehensible to most of the population, it enhanced communication at a time when there was no standard for written English. By the end of the thirteenth century, statutes written in Latin started to become common. Royal courts were established and a class of professional lawyers emerged. (http://www.languageandlaw. org/NATURE.HTM)

1.6.2 The Norman Conquest and the Introduction of French

William the Conqueror Invades England

Tiersma (1999) further mentioned that the Norman Conquest in 1066 placed French-speaking Normans in virtually all important positions in England; French thus became the language of power. Virtually all English words relating to government are originally French. The Normans initially used Latin rather than French as a written language of the law. Only around 200 years after the conquest did French statutes appear. They remained French until the 1480s. Strong evidence that the courts operated in French did not appear until the end of the 13th century. The use of French in courts seemed tied to the expansion of jurisdiction of royal courts during this period; royal courts were logically conducted in French, which was still the language of the aristocracy and royal household at this time. In a sense, therefore, adoption of French for legal purposes could initially have promoted communication with those most affected by royal law. (http://www.languageandlaw.org/NATURE.HTM)

Ironically, at the same time that French was in ascendancy as the language of the law, use of Anglo-French as a living language was beginning to decline. It is probably no accident that this was also the period when a professional class of lawyers arose. Soon after 1400, Anglo-French was virtually extinct as a living language, but it had become firmly entrenched as the professional language of lawyers. (http://www.language andlaw.org/NATURE.HTM)

The Continuing Use of Latin

According to Tiersma (1999), throughout this period, Latin continued to be used as a legal language. It came to be known as "Law Latin," and included various legal terms of French origin, as well as English words when clerks did not know the Latin. Legal maxims, even today, are often in Latin, which gives them a sense of heightened dignity and authority. Names of writs (mandamus, certiorari) and terminology for case names (versus, ex rel., etc.) are still in Latin, perhaps a reflection of the use of Latin for writs and court records until the early 18th century. (http://www.languageandlaw.org/NATURE.HTM)

Law French

Tiersma (1999) also mentioned that French eventually became a language used only by lawyers, and became known as "Law French." Early efforts to abolish it in court proceedings failed. Possible reasons for the retention of Law French after its demise as a living language include claims that it allowed for more precise communication, especially with its extensive technical vocabulary, the dangers of having ordinary people read legal texts without expert guidance, the conservatism of the profession, and a possible desire by lawyers to justify their fees and to monopolize provision of legal services. If nothing else, it reflects the conservatism of the profession at the time. (http://www.languageandlaw.org/NATURE. HTM)

Some of the characteristics of Law French that have left traces in today's legal language include addition of initial ***e*** to words like ***squire***[2], creating ***esquire***; adjectives that follow nouns ***(attorney general);*** simplification of the French verb system, so that all verbs eventually ended in ***-er***, as in ***demurrer***[3] ***or waiver***; and a large amount of technical vocabulary, including many of the most basic words in English legal system. (http://www.languageandlaw.org/NATURE.HTM)

Trilingualism and Code-switching

According to Tiersma (1999), during this period, lawyers had to be trilingual in French, Latin and English. Each language was traditionally used in specified domains. Even more than today, perhaps, law was in those days a profession of words. (http://www.languageandlaw.org/NATURE.HTM)

1.6.3 The Resurgence of English

The Demise of Latin and Law French

According to Tiersma (1999), use of Latin and Law French for legal purposes gradually declined, and was given a final coup de grâce in 1730. (http://www.languageandlaw.org/NATURE.HTM)

The Increasing Importance of Writing and Printing

Tiersma (1999) also mentioned that Legal language was originally entirely oral. If there was a writing of a legal event, it was merely a report of the oral ceremony. Eventually, the writing became a type of authoritative text, the operative event itself. What now mattered was what was written, and what was said became largely or entirely irrelevant. This progression can be seen in written reports of court proceedings, which first merely documented an oral event, but which later became the event itself, so that what is said in an appellate court in the United States today is legally immaterial; what matters is the written opinion. Legislation also went through this progression. Printing contributed to these trends by allowing for a standardized and widely-available version of the written text. Now all that matters is the enacted text of a statute, or the published version of a judicial opinion, which has led to an ever increasing fixation on the exact words of legislation, and has permitted the development of the doctrine of precedent. (http://www.languageandlaw.org/NATURE.HTM)

Further Developments in England

Tiersma (1999) also stated that as pleadings became written, rather than oral, they also became subject to increasing textual scrutiny and were often rejected for the smallest linguistic slip. This encouraged use of Form

Books, which had a conservatizing effect on legal language by promoting continuing reuse of antiquated phrasing. And legal documents became ever longer as clerks and lawyers charged by the page. In part for these reasons, the legal profession began to find itself in low repute. (http://www.languageandlaw.org/NATURE.HTM)

Legal English throughout the World

Tiersma (1999) also mentioned that English colonizers transported legal English throughout the British Empire, including North America. Despite antipathy towards lawyers and the English, the Americans maintained English legal language. The Articles of Confederation were linguistically full of legalese.

Although Thomas Jefferson advocated improving the style of statutes, it did not really follow through. The Declaration of Independence and American Constitution are elegant and relatively simple, but in general, American legal language closely resembled that of their former colonial masters. The same is true in other former English colonies. To a large extent, the retention of English legal language is closely related to the retention or adoption of English common law. People who adopt concepts from another culture tend also to adopt the words used to describe those concepts. (http://www.languageandlaw.org/NATURE.HTM).

It was evidenced that the English legal profession was trilingual: it used Latin, French, and English and this suggests the term "legal trilingualism" (Tiersma, 1999, pp. 33–34). Latin was for written pleadings and legal records; English was for hearing witnesses, while French was for oral pleadings. Sometimes, all three languages would appear in the same legal document. These languages also influenced one another reciprocally.

A good example is a case report, from the mid-16th century, which begins in law French, then changes to English due to the language of the bond at issue forming the subject of the case (the text is also littered with Latin expressions) and ends up again in law French (Tiersma, 1999, pp. 33–34). All of this largely explains the features of legal English today.

There are many relationships between language and law. In modern societies, most rules of law are written rules. They are laid down in statutes or can be found in court judgments. It is difficult to imagine a modern society without written legal texts. As a consequence, law and language are closely related. Law needs language. In the next Chapter, legal texts are discussed to identify some problems and difficulties in translating legal texts.

CHAPTER TWO

LEGAL TEXTS

The research aims at identifying some of the problems that Arabic translators face in translating legal texts and, as far as possible, suggesting viable solutions. Legal language was originally oral; any writings served only as a report of the oral ceremony (Tiersma, 1999, p. 36). Although the translation of legal texts is among the oldest and most significant and the most immensely produced all over the world, legal translation has long been neglected in both legal and translation studies (Sarcevic, 2000, p. 1). The legal translator plays a major role in the process of communication within diverse legal systems. "Translation of legal texts leads to legal effects and may even induce peace or prompt a war" (Sarcevic, 2000, p. 1).

Legal texts are formulated in a special language that is subject to particular syntactic, semantic and pragmatic constraints. Furthermore, legal language is system bound, and hence is perceived of as a product of a specific history and culture. The language of law mainly involves "parole" rather than "langue". Recognizing that "parole" is inseparable from "judicial acts", the language of law can be described as a "language of action". Sarcevic (2000) states that "the primary role of language in normative legal texts is to prescribe legal actions, the performance of which is intended to achieve a specific goal" (p. 133). Similarly, Beaugrande and Dressler also regard a legal text as "a communicative occurrence produced at a given time and place and intended to serve a specific function. It is the function of legal texts that makes them special: they are instruments of law" (1981, p. 3). The written legal text is, above all, intended to be read, and understood perhaps only after several re-readings. Crystal and Davy express this idea as follows:

> It is essentially visual language, meant to be scrutinized in silence: it is, in fact, largely unspeakable at first sight, and anyone who tries to produce a spoken version is likely to have to go through a process of repeated and careful scanning in order to sort out the grammatical relationships which give the necessary clues to adequate phrasing (1969, p. 194).

Tiersma (1999: 139) classifies legal texts into three classes according to function: operative documents, expository documents and persuasive documents. Operative documents have a performative function, in other words, the function of performing an act by the very fact of being uttered. Examples given are pleadings, petitions, orders and statutes, and private legal documents such as wills and contracts. Due to the nature of performative functions, operative documents have a rigid structure as well as formulaic language, and are therefore difficult for lay people to understand. On the other hand, expository documents such as office memoranda and persuasive documents like briefs to court are not as formulaic as operative documents, and have a less rigid structure.

2.1 The Notion of Legal Language – Real or Fictitious

The notion of legal English as a variety of language (Tiersma 1999, p. 49) has often been used in order to highlight its differences from the stereotypical interpretation of ordinary language, without assuming that it may for this reason be seen as a different language.

Legal language has also been defined as a dialect, but this designation does not appear appropriate if the idea of dialect is understood to refer primarily to notions of geographical location. From another perspective, Tiersma (1999, p. 133) also mentions legal dialects and distinguishes, for instance, between the legal English spoken in British contexts and American contexts. Some interesting examples related to (in particular lexical) differences between the two spheres are mentioned in Tiersma (1999, p. 134):

> —Sometimes one word has different meanings in various jurisdictions. In American legal English, a judgment is the disposition or outcome of a case. In England judgment also refers to the statements of reasons for the disposition, something that American lawyers call an opinion. An appellate court affirms or reverses a lower court's judgment in the United States, while it allows the appeal or dismisses it in England. A brief is an argument to the court in the United States, while it is a written case summary for the guidance of a barrister in England. Corporate law in America is company law in England. Legal idioms may also differ from place to place. An American lawyer is admitted to the bar, while a British barrister is called to the bar and may eventually talk silk (become a Queen's Counsel). (Tiersma 1999, p. 134).

The terms, jargon or argot, are also occasionally used to identify specific professional languages, but they often tend to be associated with an aura of complexity and incomprehensibility. Similarly, expressions

such as legal lingo and legalese tend to be attributed a relatively negative connotation and are not frequently used. With particular (but not exclusive) reference to the language used in the courtroom, Danet (1980) talks about language in the legal process, and Levi and Walker (1990) often use the expression language in the judicial process. On a practical note, scholars have also remarked that there has been a tendency to avoid the term legal in order to circumvent potential confusion with lawful (Mellinkoff, 1963).

2.2 Definition of Legal Texts

A legal text is very different from ordinary speech. It is any piece of writing that carries an obligation or allows certain actions or things, makes a binding promise, or sets out penalties to be imposed in case of violation. This is especially true of authoritative legal texts: those that create, modify, or terminate the rights and obligations of individuals or institutions. Such texts are what Austin (1962) might have called "written performatives". Lawyers often refer to them as operative or dispositive. Authoritative legal texts come in a variety of genres. They include documents such as: constitutions, contracts, deeds, orders/judgments/decrees, pleadings, statutes, wills. Each genre of legal text tends to have its own stereotypical format and is generally written in legal language or "legalese". Thus, a contract contains one or more promises, a will contains verbs that transfer property at death, and a deed transfers property during the lifetime of its maker.

"Laws are in essence attempts to control human behavior, mainly through a system of penalties for law breaking. The Law exists to discourage murder and theft, and bad faith in business dealing among other offences". (Gibbons, 1994, p.3)

The concern is a special language that has been developed to become the domain of special people, in a professional rather than a social sense. Referring to a definition of special languages as "semi-autonomous, complex semiotic systems based on and derived from general language", Sager (1990) makes the point that the effective use of such special languages "is restricted to people who have received special education and who use these languages for communication with their professional peers and associates in the same or related fields of knowledge" (p. 105).

Gibbons (1994, p.3) makes the point that "… the basic concepts of rights and obligations of a member of a community are deeply embedded in the fabric of language itself, and existed before there were codified laws." He argues that language precedes laws, and has hence constructed

and continues to construct them, rather than the opposite. Even the concepts of "murder" and "guilt", for instance, did exist in languages even before laws were conceived or codified (Gibbons, 1994, p.3).

Another view of the origins of legal texts can be gleaned from Maley:

> "Particularly in literate cultures, once norms and proceedings are recorded, standardized and institutionalized, a special legal language develops, representing a predictable process and pattern of functional specialization. In the Anglo-Saxon common law system, a discrete legal language has been apparent since post-conquest England, which in many essentials has persisted to the present day." (Maley, 1994, p.11).

Although Maley can be interpreted as saying that legal concepts had existed first and that a special language was created or developed to cater for these concepts, it can be argued that the "discrete legal language" referred to was in fact part of the existing language which was then modified, or simply exclusively allocated for use by legal practitioners and judges. There is evidence to support the second interpretation. We all use the words "actual", "bodily" and "harm" in our everyday conversation. They are neither technical nor highly learned terms. In combining the three words together, the Penal Code has given a completely new meaning to this combination in the criminal charge "assault occasioning actual bodily harm".

The word "actual" is the key element in proving the charge against the offender. It means that the skin of the victim should have been opened through the use of personal force or of a certain weapon before the charge could be found proven. More interestingly, from a technical viewpoint is the fact that:

> —If a person is caused a hurt or injury resulting, not in physical injury, but in an injury to the state of his mind for the time being, that is within the definition of actual bodily harm. An assault which causes a hysterical and nervous condition is an assault occasioning actual bodily harm." (Bartley, 1982, p. 59).

Thus, we have a situation where "actual bodily" actually refers to "bodily" as well as "mentally". This is obviously contrary to our normal understanding of the word bodily to mean just the opposite of "mentally". "Weapon" is another term that is used differently in a legal sense. Contrary to the general idea we usually associate to this word, namely war machines and firearms, in law it simply means anything that is used to commit an assault offence. But back to "actual", the precise meaning of the term, in a legal sense, becomes even more important and crucial when

it is contrasted with another term, "grievous", in another criminal charge under the Act: "assault occasioning grievous bodily harm". "Actual" and "grievous" are modifiers of crimes at different levels of seriousness expressed through the use of words that had already existed in the English language but were then made to acquire specific and precise meaning for the proper conduct of law. The superlativeness of "grievous" is obvious in this charge as it was in Mark Anthony's "And "grievously" hath Caesar answered it" (William Shakespeare, Julius Caesar; Act 3 Scene 2). The time span separating the two usages of this term, nearly three hundred years, has changed neither its main concept nor its superlativeness. It is only that the law has given it a significantly technical weight which the prosecution would usually endeavor to prove and the defense would either deny or downgrade to "actual", in which case the lesser charge would then carry a lesser sentence.

It is this special usage, or special meaning, given to ordinary words that made Mellinkoff theorize that "… the language of the law depends for survival upon those it unites in priesthood – the lawyers … only the lawyers can exploit the capabilities of the language of the law …." (Mellinkoff, 1963, pp. 453 - 454). Others have even suggested that the legal language can be reduced to English only in translation (within the same language), and consequently that the language of the law is not yet a part of English until such translation process has been achieved.

Morrison (1989), who is critical of Mellinkoff's "rhetoric" and the "excesses" of others, makes the point that the debate surrounding the language of law is not unique, as it has also existed in the area of philosophy and mathematics, among others. The question at the core of the controversy, according to her, is whether or not lawyers, after all, use the language, and if the answer is in the negative, as some suggest, they actually failed to prove their case beyond doubt and in fact had created more questions than answers. She sums up her argument, without exaggerating to prove the correctness of her point of view, but strongly enough to rebut the argument that the language of law and the ordinary language are not one and the same.

> "Is there, then, "no truth" in some form of the "expert's only" study? The answer is, there is some truth. There is something distinctive about how lawyers speak, although this feature is not distinctive to only legal language; and there is something distinctive about the meanings of some "legal" words although this distinctive feature falls short of turning the language of the law into a technical language that only lawyers speak and falls short of being unique to legal language." (Morrison, 1989, pp. 286-287)

The distinctness that Morrison (1989) refers to is in the high level of care lawyers" use in their speech rather than technicality, and that this level of care itself is responsible for making the language of law somewhat alien to non-lawyers. She further makes the point that speaking carefully rather than technically is not exclusively limited to the legal profession.

Whilst it is true that lawyers make a distinction between "verdict" and "judgment", "accused" and "defendant", "summons" and "subpoena", it is also true that this is motivated by lawyers" preference for particular terms to refer to particular persons, things or concepts. This is not unlike the colorist whose range of colors he knows by name is wider than that used by lay persons. A colorist may refer to Persian turquoise or American turquoise, while a lay person may refer to both as shades of blue. In both cases, the use by lawyers and colorist of the "preference-among-meanings phenomenon", as Morrison calls it, that is the preferred term chosen from a range of very close options, could lead to difficulties in conversations between lawyers and colorists on the one hand and lay persons, on the other. She concludes that both use their words more carefully, but not technically. However, she refers to their words more carefully, but not technically.

However, she refers to their words as "jargon" or "trade talk", without elaborating on whether this in itself in not considered a precursor for the existence of a technical language, which I call here "legal language".

2.3 Legal Language as a Distinctive Genre

Legal genres are defined in the following manner: "The highly institutionalized and sometimes ritualized discourse of the law often follows regular patterns; organized sequences of elements which each play a role in achieving the purpose of the discourse". (Gibbons, 1994)

Some fundamental written genres in legal English are statutes (legislative writings), cases, law reports, law review journals and law textbooks. The language of law functions as a spoken and written medium for exchanging information between people participating in various legal situations happening in different legal settings. For centuries it has succeeded in keeping its special status. Legal language is a distinctive genre of English. Maley (1994) considers it "a medium, process and product in the various fields of the law where legal texts, spoken or written, are generated in the service of regulating social behavior" (p. 11). From historical records it is apparent that the language of law has always

differed from common-use-language. It has been too difficult for a layman's mind to comprehend legal writing.

From a slightly different perspective, Bhatia identifies various genres within the wider category of legal writing. Bhatia (1993) starts from the definition of genre given by Swales:

> Genre is a recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s). (Swales 1981 cited in Bhatia, 1993, p. 13)

He then comments upon this definition, saying that genre "is primarily characterized by the communicative purpose(s) that it is intended to fulfill. This shared set of communicative purpose(s) shapes the genre and gives it an internal structure". (Bhatia, 1993, p.14). As a consequence, the best way to recognize and classify texts belonging to specific genres is to look at the purpose of the text itself. Bhatia highlights also that thanks to their experience within a certain specialist professional or academic community, experts acquire the ability to cope with the structure and the conventions of a specific genre and "although the writer has a lot of freedom to use linguistic resources in any way s/he likes, s/he must conform to certain standard practices within the boundaries of a particular genre" (Bhatia, 1993, p. 14). Therefore, a text belonging to a particular genre is expected to contain certain elements and not to contain others; it must include a minimum of obligatory elements that, in addition, are supposed to be recognized by those who take part in the social action. Bhatia finally provides his own definition of genre as "an instance of a successful achievement of a specific communicative purpose using conventionalized knowledge of linguistic and discoursal resources" (Bhatia, 1993, p.16).

As far as legal language is concerned, Bhatia points out that there are a variety of legal genres. According to his classification, the primary legal genre is legislation, which serves the main purpose of ruling society by creating and maintaining "a model world of rights and obligations, permissions and prohibitions" (Bhatia, 2006, p. 1). A further set of legal genres includes judgments and cases, which can be considered as the applications of the legislative intentions expressed through legislation. If

on the one hand a legislative provision expresses the ideas, intentions and values of a model world, a legal judgment, on the other hand, has to deal with the events that take place in the real world and that, in most cases, differs completely from legislators" original intentions. "Judgments and cases are thus the written records of negotiation of justice, which can be viewed as attempts to enforce legislative intentions to bring the real world closer to the model world" (Bhatia, 2006, p. 4).

There are two more sets of legal genres: the target genres and the enabling academic genres. The target genres include a range of professional genres (products and instruments of legal practice): property conveyance documents, contracts and agreements, including insurance documents, court case documents, and affidavits of various kinds (Bhatia, 2006, p. 6). The enabling academic genres include both academic legal genres that are used to train legal professionals (textbooks, legal problems, moots, and examination essays) and the genres which serve as interface between the academy and the profession (legal memoranda, critical essays, problem-solving essays, and pleadings). The function of these pedagogic genres is to explain and interpret that model world which should be created through and governed by legislation in light of what effectively happens in our real world, with the aim of training those professionals who will perform legal practice (Bhatia, 2006, p. 6).

Although all these genres may appear to be very different and independent from one another, there can be a mutual exchange among them. For example, the author of a textbook about criminal laws will be undoubtedly influenced by the language used in the body of laws that relates to crime and will thus use words, expressions and even grammatical structures that are peculiar to that legal genre.

2.4 Register

The question of register has been addressed by many linguists and translation theorists. Register is basically defined as a variety of language that a language user considers appropriate to a specific situation (Baker, 1992, p.15). Halliday (1985, p. 38) provided an abstract definition of register: a register is a configuration of meanings that are typically associated with a particular situational configuration of field, mode and tenor. Apparently, language users utilize a variety of registers to suit a variety of situations, and that the concept of a "whole language" cannot be of much use for many linguistic purposes (Catford, 1965). Registers are distinctive varieties of language used in different types of situation. Situation types, and the registers associated with them are conventionally

recognized in a society. They form part of an individual's communicative competence that is, s/he can speak or write a number of such varieties and recognize many more originating from others, including professionals. A statute, an election speech, and an economic contract are all distinctive in language. One sentence from any of these and many more such situation types would enable him/her to identify it correctly.

In describing legislative writing, Bhatia (1994, pp. 136-137) states it is highly impersonal and de-contextualized, in the sense that its illocutionary force holds independently of the speaker or originator, on the one hand, and the hearer or the reader, on the other. Bhatia makes the point that since the general function of legislative writing is directive, namely to impose obligations and confer rights, and given that human nature is what it is – trying to wriggle out of obligations and to stretch rights to unexpected limits – legal draftsmen "attempt to define their model world of obligations and rights permissions and prohibitions as precisely, clearly and unambiguously as linguistic resources permit" in order to guard against human eventualities of this nature Bhatia (1994, p. 137). Paradoxically, however, those draftsmen have to guard against eventualities of another type.

If we take legal language to be the sign, and the society as the user of that sign, we will be looking at elements like function, context and comprehension. Legal texts do not only describe, report and narrate facts, information and arguments, but also they can be used to impose obligations, regulate relationships and perform legal actions (Austin, 1962).

After the introduction of the speech act theory by John Austin in 1962 and the latter elaboration on the theory by Searle (1979), many theorists have explored the applicability of this theory to legal language. Legal language was found to display two main speech act types: descriptive (informative) and prescriptive (vocative) discourse. In dealing with contracts, Trosborg (1995, p. 312), while acceptably emphasizing that legal speech acts cannot be translated literally, classifies them as directive, commissive and constitutive. She uses the word constitutive to denote sentences used to explain or define expressions and terms in the contract or to supply information concerning the application of the statute. She discusses the meaning of verb forms in legal speech acts in a translation perspective.

Austin (1962) proposes a series of success conditions for a performative utterance to meet or else the speech act will fail, moreover, Nord (1997, p. 35) describes the adequacy of a translation in the following terms:

> This means the translator cannot offer the same amount and kind of information as Source-text producer. What the translator does is offer another kind of information in another form [ ]. Within the framework of Skopos theory, "adequacy" refers to the qualities of the Target text with regard to the translation brief: the translation should be "adequate" to the requirements of the brief.

The context of the translation, its purpose (skopos) and the nature of the text and the text receivers can be quite decisive. However, the translation commission can contribute significantly to the quality and functionality of the translation by providing the translator with information about the intended target-text functions, addressees, the prospective time, place and motive of production and reception of the text. (Nord, 1997, p. 137).

One of the primary tasks of the translator is to produce a text that can be interpreted and applied as intended by the legislator. Legal translators must strive to produce a text that expresses the intended meaning and achieves the legal effects intended by the author. In the legal domain, this is known as legislative intent. Mohammad et al (2010). In contracts, this is known as the intent or will of the contracting parties. Based on that, a sufficient communication process within the mechanisms of the law can be said to have taken place when the translated versions of a single text are interpreted and applied uniformly as intended by the contracting parties. (Sarcevic, 2000, p. 73).

2.4.1 Field of Discourse

Field of discourse determines the use of specialized language and affects the language user's choice of linguistic items depending on what kind of action the language user is involved in, apart from the immediate action of speaking or writing. Linguists agree that there is a difference between the field of discourse and the subject matter of any piece of writing. An act of parliament which controls the importation, manufacturing and distribution of certain products is actually about controlling, that is regulating, these things. This is a legal field of discourse, although the subject matter is products and some importation aspects. Likewise, a decree announcing the appointment of a manager, or to establish a new division, is issued usually to declare and enforce.

If legal language is taken to be the sign and the society as the user of that sign, we will be looking at elements like function, context and comprehension. Legal texts do not only describe, report and narrate facts, information and arguments, but also they can be used to impose

obligations, regulate relationships and perform legal actions (Austin 1962).

2.4.2 Mode of Discourse

Mode of discourse, on the other hand, is a term that refers to "what part the language is playing, what it is that the participants are expecting the language to do for them in that situation: the symbolic organization of the text, the status that it has, and its function in the context, including the channel (is it spoken or written or some combination of the two?) and also the rhetorical mode, what is being achieved by the text in terms of such categories as persuasive, expository, didactic, and the like" (Halliday and Hasan, 1985, p. 12).

It is the linguistic reflection of the relationship that the language user has to the medium of communication. It refers to the role that the language is playing and the medium through which it is playing it. Mode is closely linked to the channel of the discourse which refers to the medium through which the text is being transmitted. Mode should always be thought of on a kind of continuum, e.g. an email will show features of both spoken and written modes.

Legal texts usually regulate, declare, create responsibilities, prohibit or allow, sanction, censor, and so forth. This is usually done in writing, but sometimes orally as well. In fact, even judgments and orders made by magistrates and judges in courts have their origin in writing. An apprehended violence order or an eviction order usually follows a set format which the magistrate simply spells out with variation only to the personal details, dates and similar variables. It should be noted that such orders are then written down on the court papers. "Therefore, much legal writing is by no means spontaneous but is copied directly from "form books", as they are called, in which established formulae are collected" (Crystal and Davy, 1969, p. 194).

Legal texts are written to be read as if overheard (to be read as if thought). Given their importance as regulatory and declaratory instruments, legal texts are used and acted upon only after they have been read and scrutinized. The above formula also means that what is allowed in ordinary speech is usually not allowed in legal texts. The verbal apostrophe in "he's" and "I"m", for example, is not allowed in legal texts. Furthermore, specific writing conventions have to be adhered to in such texts, even if they had been first spoken (as in the case of orders and judgments).

2.4.3 Tenor of Discourse

According to Halliday and Hasan (1985), the tenor of discourse refers to:

> 'who is taking part, to the nature of the participants, their statuses and roles: what kinds of role relationship obtain among the participants, including permanent and temporary relationships of one kind or another, both the types of speech role that they are taking on in the dialogue and the whole cluster of socially significant relationships in which they are involved?' (Halliday and Hasan, 1985, p. 12).

The tenor of discourse is often created by the context of the discourse and the way its participants relate to each other. Tenor which refers to the relationship between the addressor and the addressee is also of major importance, given that the language people use varies depending on their interpersonal relationship, and

"may be analyzed in terms of basic distinctions such as polite-colloquial- intimate, on a scale of categories which range from formal to informal" (Hatim and Mason 1990, p. 50). The language of law is formal. This can be explained by the fact that the law is usually written by the legislative or the judiciary. Since laws are written for application, one would assume that they should be couched in a language that is easy to understand by all. This is hardly the case, however. More often than not, laws are highly complex, both in structure and terminology or that is how they appear to be at least.

Tenor of discourse is also responsible for the frequent use in legal texts of foreign words and expressions. In England, Latin continued to be the language of law for a few centuries even after the year 1400, when English became a standard language following the Middle English phase, when all the dialects of England seemed to be as good as each other, and all of them had literatures. French has also a niche in the English legal texts, and to-date some of these are still studded with Latin and French words and terms.

Having studied the legal texts in general, it is imperative to study the nature of legal language and this is the topic of the next chapters.

CHAPTER THREE

DESCRIPTION OF LEGAL LANGUAGE AND LEGAL TRANSLATION

Legal texts are a sub-category of a technical genre which refers to "conventional forms of texts associated with particular types of social occasion" (Hatim and Mason, 1990, p. 241). These texts come in all forms and shapes. Besides the laws, bylaws and regulations, charters, protocols, treaties and agreements, there are also other documents that can be classified as legal texts. Powers of attorney, contracts, court orders and even applications to transfer money overseas can all be grouped under the same heading.

Such texts allow us to compare between different strategies employed to deal with problems specific to each text type within the same document and the varying levels of formality imposed by the subject matter; i.e. field of discourse, and the writer-reader relationship forces translators to make changes or allowances to accommodate such variations in the target language text.

The multitude of texts that can be referred to as legal suggests that there are a multitude of legal styles, legal registers and legal "sub-genres". Such suggestions may be made on the basis that the subject matter of a given text decides not only the level of register, which is "the tendency to pattern language behavior in relation to a particular type of activity level of formality, etc." (Hatim and Mason, 1990, p. 243), but also the field of discourse. The term "field of discourse" is used to refer to the linguistic choices that a writer or a speaker makes to describe or refer to "what is going on" rather than to the subject matter itself. According to Crystal and Davy (1969), who make this point, regardless of the type of subject matter in any legal text, it can always be reduced to an underlying logical structure which says something like "if x, then z shall be y" or alternatively "if x, then z shall do y"… every action or requirement from a legal point of view depends upon a set of conditions which must be satisfied before anything at all can happen." Crystal and Davy, 1969. p. 203.

This statement, however, is ideally applicable to legislations rather than judicial material. In the English legal system, the two are intertwined and inter-dependent. The reference here is to the English common law system, which is followed in most English speaking countries. Despite this inter-dependence, there are significant differences which have been neatly summed up by Maley (1994):

> 'There is no one legal discourse but a set of related legal discourses. Each has a characteristic flavor, but each differs according to the situation in which it is used. There is judicial discourse …. There is courtroom discourse, used by judges, counsel, court officials, witnesses and other participants … there is the language of legal documents …. And there is the discourse of legal consultation, between lawyer and lawyer, lawyer and client'. (p.13)

Maley explains the judicial discourse as being the language of judicial decisions, either spoken or written, that is reasonably flexible and varied but nonetheless contains recognizably legal meanings, in predictable patterns of lexicogrammar. The courtroom discourse, on the other hand, is interactive language, peppered with ritual courtesies and modes of address. It is the closest approximation to everyday speech of all public legal discourses. Legal documents include contracts, regulations, deeds, wills, acts or parliament, all of which are decidedly legal and essentially formal.

When we talk about legal translation, the reference is usually to strategies to translate the linguistic devices utilized in conveying the legal points of view in the original text.

Legal language is not a language of everyday use by a population while it is based on ordinary language. It is a specialized language of legal norms and related discourse. Its distinctiveness may be seen in a number of characteristics that differentiate it from the language of ordinary use. But there is no universal language of law that would be comprehensible to all languages. There is a difference in the legal language in Arabic and the legal language in English. When translating from English into Arabic or vice versa, the translator must be aware of the differences between English and Arabic legal texts.

The relationship between the language and the law is mutual: the legal system influences the nature of the legal language and the legal language – the language of the legal discourse – influences the system. The speech of lawyers is conditioned not by the law alone, but also by the prevailing language of their environment (Mellinkoff, 1963, p. 4). The language of law is a system- and culture-bound language for special purposes. This does not mean that the language of law is completely detached from the

ordinary language. Most of its words are taken from the ordinary language. On the other hand, legal language influences everyday speech and many of its originally technical terms are now accepted as common. Mellinkoff (1963, p. 9) gives the examples of *"plaintiff*" or *"defendant"* in English.

3.1 The Nature of Legal Language

As is commonly acknowledged, legal translation is complex and difficult. The complexity and difficulty of this language is attributable to the nature of law and the language that this law uses, and the associated differences found in intercultural and interlingual communication in translating such legal texts. Prominently, legal language is identified and linked with the normative, performative and technical nature of language use, and the inherent indeterminate nature of language, in general. Cao (2007, pp. 13-20) classifies legal language with respect to the nature of its use that can be described as normative, performative and technical.

3.1.1 Normative Language

Legal philosophers agree that legal language is a normative language. It is related to norm creation, norm production and norm expression (Jori, 1994). This means that the language used from law or legal sources is largely prescriptive.

Legal language, as a kind of register particularly used by a specific social group-- lawyer, is a language for professional purpose. Therefore, whether it is in a legal enactment, judicial pronouncement or a contract, it is not just to express or convey knowledge and information, but also to direct, influence or modify people's behavior.

The normative language of law derives from the fact that law has the basic function in society of guiding human behavior and regulating human relations. Law is distinguished from most other types of human institutions.

Consequently, the language used in law to achieve its purpose is predominantly prescriptive, directive and imperative. Laws are written in a language the function of which is not just to express or convey knowledge and information, but also to direct, influence or modify people's behavior, whether it be a legal enactment, judicial pronouncement or a contract. As is noted by Maley (1994, p. 11):

> 'In all societies, law is formulated, interpreted and enforced . . . and the greater part of these different legal processes is realized primarily through language. Language is the medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behavior'.

In the words of the Swedish legal philosopher, (Olivecrona, 1962, p. 177, quoted in Jackson, 1985, p. 315), "… the purpose of all legal enactments, judicial pronouncements, contracts, and other legal acts is to influence men's behavior and direct them in certain ways, thus, the legal language must be viewed primarily as a means to this end".

Consequently, the Language of law is used to impose rights and obligations; it is a normative language. Its predominant function is to direct people's behavior in society. It authoritatively posits legal norms and serves to communicate the legal norms to their addressees.

3.1.2 Performative Language

According to Cao (2007, pp. 14-15), closely related to the normative nature of law and legal language is the notion that language is performative. Law depends upon language, in particular the normative and performative nature of language. In speech act theory as first proposed by J.L. Austin (1962, also Searle, 1979), speech is not just words, as people normally associate it with, but also actions. Words are not only something we use to say things, we also use them to do things. The performative use of language is not exclusive to law, but law relies heavily on performative utterances. Legal effects and legal consequences are commonly obtained by merely uttering certain words, for instance, "You are guilty", or "You are fined $3.000" as regularly pronounced in court. Language used in law can perform such acts as conferring rights, prescribing prohibition and granting permission. By merely uttering words, people accept public and private legal responsibilities, assume legal roles and qualities, transfer legal rights and impose or discharge obligations (Jori, 1994, p. 2092). Thus, legal speech acts are said to be constitutive of their effects.

In relation to legal discourse, Danet (1980) classifies legal language use into different types of speech acts, based on Searle's (1976) general classifications of speech acts. Thus, legal speech acts are said to consist of the following categories (Danet, 1980, pp. 457–461):

1) Representatives, which are utterances that commit the speaker to something being the case or assert the truth of a proposition, including testifying, swearing, asserting, claiming and stating.
2) Commissives, which commit the speaker to do something in the future, such as in contracts, marriage ceremonies and wills.
3) Expressives, which express the speakers" psychological state about or attitude to a proposition, including apologizing, excusing, condemning, deploring, forgiving and blaming.
4) Declaratives, whose successful performance brings about a correspondence between their propositional content and reality, including marriage ceremonies, bills of sale, receipts, appointments, and nominations, and the legislative stipulation of rights and of definitions of concepts, and lawyers" objections, sentences, and appellate opinions, indictments, confessions, pleas of guilty/not guilty, and verdicts. There is a sub-category of representative declarations for certain institutional situations, e.g. a judge making factual claims, requiring claims to be issued with the force of declaration, and this would require the speaker to have certain authority. This would cover marriage ceremony, bills of sale, appointment or nominations, legislative stipulation of rights and definition of concepts, indictments, confessions, pleas of guilty/not guilty, and verdicts.
5) Directives, which are future-oriented speech acts, seeking to change the world, to get someone to do something, most prominent in legislation that imposes obligations.

Hence, the performative nature of language is indispensable to law in achieving its purpose of regulating human behavior and society and setting out obligation, prohibition and permission.

3.1.3 Technical Legal Language

Legal language is a technical language and legal translation is technical translation involving special language texts. But, in fact, there have been debates as to the nature of legal language, whether legal language actually exists and whether it is a technical language.

There are two main positions regarding the nature of legal language. One view holds that legal language is a technical language while the opposite view holds that there is no legal language, and, even if it exists, it is part of the ordinary language. For the latter view, some question is raised about whether it is scientifically correct to speak of the language of law. In this view, there is no law language. Legal language is no more than a specialized form of the ordinary language. It is a use of the ordinary language for particular purposes, and in this case, legal purpose. On the other hand, many believe that legal language is an identifiable technical

language. They accept the validity of the designation "legal language". Some even argue that it is a separate language, a sub-language or a social dialect.

If we accept, as has been mostly accepted now, that there is such a linguistic phenomenon as legal language, and that it is a technical language, then, what kind of language is legal language? What makes it different from other types of language use?

Diverse views have been expressed over the years as to the nature of legal language as a technical language. For instance, Caton (1963), a linguistic philosopher, believes that legal language is a technical language, but "technical language is always an adjunct of ordinary language" (Caton, 1963, p. viii), whether ordinary English or ordinary French. He argues that technical languages have the same syntax as ordinary language, and speech acts performable in ordinary discourse are performable in technical contexts, but only differ in vocabulary (Caton, 1963). Caton counts languages of physics, mathematics, farming, chess and the law as among technical languages (see also Morrison 1989). Similarly, according to Schauer (1993, p. 571), a legal philosopher, legal language as a technical language often operates in a context that makes legal terms have meanings different from those they bear in non-legal contexts of use. Legal language is thus parasitic on ordinary language.

In contrast, others argue that legal language as a technical language differs from ordinary language. For instance, the legal philosopher, Hart (1994) argues that owing to the distinctive characteristics of legal language, "legal language is sui generis", "unique onto itself". Fundamental to Hart's view is that legal language is distinctive because it presupposes the existence of a legal system and presupposes particular rules of law, against the background of which legal language obtains its meaningfulness and particular meaning, and because of the distinctive feature of rules of law as rules (see also Morrison 1989). Hart argues that technical terms affect the meaning of each other word used in connection with the technical word and that legal terms have meanings only in the context of the existence of a legal system and only through particular rules of law (Hart 1994).

Another important view is that of Jackson (1985), a legal philosopher and legal semiotician, i.e. viewing legal language from a semiotic perspective. His theory has implications in particular for legal translation. For Jackson, legal language is a technical language. Legal lexicon and its structure display some of the characteristics of this technical language. He further argues that legal language is autonomous of the natural language. Legal language, "having a lexicon constituted in a manner different from that of the ordinary language, and involving terms related to each other in

ways different from those of the ordinary language, must be autonomous of the ordinary language", although this does not exclude the possibility of historical influence from ordinary to legal language or of considerable factual correspondence (Jackson, 1985, p. 47).

According to Jackson, it is true that legal language needs to draw upon the whole resources of the natural language for its intelligibility, but legal language may only, to the extent that it resembles ordinary language, appear to be intelligible to the lay person (Jackson, 1985, p. 47). The lay person may read legal language as if it were natural language; he or she may be quite oblivious to those systematic differences that give the same words a different meaning to the lawyer (Jackson, 1985, p. 47). Equally, we have to account for the occurrence of incomprehension of legal language even amongst those who have a sophisticated knowledge of the natural language concerned (Jackson, 1985, p. 47). It is "lack of knowledge of the system, rather than lack of knowledge of individual lexical items, which produces this effect" (Jackson, 1985, p. 48). Although legal language depends upon the semantics of ordinary language as judges frequently invoke the ordinary meaning of language in legal interpretation, yet, according to Jackson, if ordinary language meanings are admitted, "it is solely by virtue of the choice made within the legal system to admit such meanings" (Jackson, 1985, p. 48).

The "non-legal sense of a word adopted into the legal lexicon provides the jurist with the source of one possible choice as to its particular meaning in law", but the choice can only be made from within the legal system, and "does not occur automatically as a result of the semantic pull of the non-legal meaning" (Jackson, 1985, p. 50). Thus, according to Jackson, the legal system is critical to understanding. The words make sense only within the context of the legal system itself. Understanding an item of the legal lexicon requires knowing the legal system. This is an important reminder for the legal translator.

Regarding the discussion above, language and language use, including legal language, consist of more than just the lexicon. Therefore, we can study legal language and its nature by looking at legal language as a register. This gives an additional perspective to the foregoing discussion.

Register is a language variety according to Halliday and Hasan (1985). Register is "what you are speaking at the time, depending on what you are doing and the nature of the activity in which the language is functioning" and it "reflects the social order, the types of social activity" (Halliday and Hasan, 1985, p. 41). Register is a functional language variation; a contextual category correlating groups of linguistic features with recurrent situational features (see Halliday et al. 1964). It is a variety of language

use. Register comprises an open-ended set of varieties of language typical of occupational fields such as the language of religion, legal language and medical language. Furthermore, registers are differentiated from one another in their meaning, and therefore they differ in the vocabularies that express that meaning, and in grammatical structure. Thus, register markers are firstly lexical, e.g. technical terms, and secondarily, structural, e.g. particular use of grammatical features (Halliday and Hasan, 1985, p. 41).

If we consider legal language as a register, firstly, it spans a continuum from almost normal formal usage to highly complex varieties that differ substantially from normal formal usage (Danet, 1980). Secondly, even though legal register differs from other language uses, different registers are not entirely discrete. Rather, there is a common core that extends, not necessarily evenly, across all registers together with variations in each register. According to Ingram and Wylie (1991, p. 9):

> "A special purpose register is not so much a special language as one language used in special contexts, for special purposes, with numerous but potentially identifiably features emerging more or less frequently in each situation and differentiating the register as a sub-system of the language by the frequency of occurrence of the syntactic, lexical, semantic, functional, cohesive and other features."

If such a view is adopted, then language should be perceived as "a systematic whole which responds to situational requirements", with different language forms occurring more or less frequently in different situations, and registers are "different manifestations of a total system" (Ingram and Wylie, 1991, p. 9). This means that legal register shares common features with ordinary language. Thus, one may say that the relation between legal language as a special purpose register and the rest of the language is that of a part to the whole, a part in which the general features of the language occur even if in different frequencies of occurrence (Ingram and Wylie, 1991, p. 11).

To sum up, it can be said that legal language, as a register, is a variety of language use of a technical nature. It shares the common core of general language, but is not identical to ordinary language. There are syntactic, lexical, textual and pragmatic features that are singular to legal language as a technical language.

3.2 Features of Legal Language

There have been many works on the features of English legal language. The pioneer in this field is Mellinkoff (1963), followed by linguists such

as Crystal and Davy, Danet, Bhatia, Maley, and Gibbons, and then lawyer-linguist Tiersma. The language of law has developed particular linguistic features–lexical, syntactic and pragmatic–to meet the demands of law and to accommodate the idiosyncrasies of law and its applications (Cao, 2007, p. 20). Legal English style and lexicon originate in various languages: Anglo-Saxon, Latin and/or French. Legal language was originally oral; any writings served only as a report of the oral ceremony (Tiersma, 1999, p. 36). It took quite a long time to accept the written texts as authoritative. Formbooks were written and their main effect was conservation of legal language, its terminology and phraseology. Although the ritualistic and the magical have disappeared from law, they have not disappeared from the language of law.

In the following section, the features of English legal language are examined in terms of style, lexicon and syntax.

3.2.1 Style

Legal style refers to the linguistic aspects of the written legal language and also the way, in which legal problems are approached, managed and solved (Smith, 1995, p. 190). Legal style results from legal traditions, thought and culture (Smith, 1995). Generally speaking, legal writing is characterized by an impersonal style, with the extensive use of declarative sentences pronouncing rights and obligations. But different legal languages also have their own styles.

Some of the most characteristic features of legal language are flexibility and preciseness, which were pointed out by Mellinkoff (1963), Tiersma (1999) and Gibbons (2002). Legal experts deliberately use vague terms such as "reasonable" to cover a variety of situations. On the other hand, they use some words in an extremely precise way. Impersonality is another characteristic of legal language. Lawyers address the judge by saying "May it please the court" as if s/he were the third person (Tiersma 1999).

Legal style results from cultural and legal traditions. Mellinkoff (1963, p. 24) says the language of law has a strong tendency towards certain mannerisms such as being wordy, unclear, pompous and dull. Legal texts tend to use a number of words instead of one, e.g. "annul" and "set aside" instead of "annul"; or "null" and "void" instead of "void". Sometimes, they seem to contain a great part of text that seems to be devoid of meaning (as Mellinkoff puts it) such as using metaphors. Pomposity in the language of law may take many shapes, especially by using words evoking respect, e.g. "solemn", "supreme", "wisely". Pomposity and wordiness, together

with long complex sentences and a lack of clarity of expression contribute to the dullness of the legal language.

As Cao (2007, p. 21) writes, legal utterances perform acts, creating facts, rights and/or institutions: they are speech acts. Their performative nature may be marked by special words such as hereby and various performative verbs such as "declare", "undertake", "promise", etc.

3.2.1.1 Layout

Farghal & Shunnaq (1992) point out what is meant by layout that: "Layout refers to the sketch or plan of the texts" physical appearance. This relates to paragraphing, indentation, and graphitic choices, viz., capitalizing, italicizing, underlining and bold-typing." (pp. 205-206).

In this regard, Crystal & Davy (1969, p. 197) proclaim that legal documents were usually made as a solid block of script whose long lines are from margin to margin, and there were no patterns of spacing or indentation to indicate the limits of the paragraphs or the relation between them. It was common for draftsmen to compose an entire document in the form of one single sentence.

Whether it is a whole statute, a decree, a court order, an international treaty or a sales contract, there is always a preamble which sets out the reason why the document should exist. There may be one or more reasons, and these are often listed in a point form starting with "whereas", "further to", "subject to" or "pursuant to" or similar terms. Sometimes, these reasons may be in the form of a list of nonfinite clauses which start with "nothing that …", "acknowledging that…" and so forth. All these points have to be treated as one whole paragraph connected with the initial noun phrase in the preamble.

The meaning becomes complete only when the verb appears after these points, often preceded by a portmanteau type word such as "therefore", "hereby" and so on. What follows is usually a list of obligation or things to be done by either party to the contract or agreement, or by everyone if the document is a statute or an order.

The layout of some legal documents could also take a simpler form, with the names of the parties stated, together with the details of the property or service subject of the document, followed by the list of obligation and things as stated.

Another feature of the English legal texts, as far as layout is concerned, is the absence of punctuation. As it is normally known, punctuation helps reading a piece of writing loudly. But, what if legal texts are originally

made to be read in silence, not to be spoken at a loud voice and hence the thinness of their punctuation.

Punctuation was intentional since legal texts were supposed to be scrutinized in silence. This non-use of punctuation, as claimed by Crystal & Davy (1969, p. 194), has two other reasons: the first is the flexibility of adding or omitting its marks as an attempt for forgery. The second is the perception of the mechanics of punctuation as worthless in revealing the grammatical or logical structure of written language. The sentences in a legal text are usually long; and it was quite common for draftsmen to compose entire documents in the form of a single sentence and the layout of legal documents was usually laid down as a solid block of script.

3.2.1.2 Syntax

A common feature of the syntax of legal language is the formal and impersonal written style coupled with considerable complexity and length. Generally speaking, sentences in legal texts are longer than in other text types (Salmi-Tolonen, 2004, p. 1173), and they may serve various purposes. In statutes, often long and complex sentences are necessary due to the complexity of the subject matters and the prospective nature of legislative law. This is the case with most legal languages. Extensive use of conditions, qualifications and exceptions are the additional linguistic features of legislative language, commonly employed to express complex contingencies. These peculiar linguistic features, according to Bhatia (1994), often create barriers to the effective understanding of such writing for the ordinary reader including the translator. Thus, to be able to understand and translate legislative provisions, one is inevitably required to take into account the typical difficulties imposed by some of these factors (Bhatia 1997: 208).

At the sentence level, legal English sentences "are, almost without exception, complex" (Crystal and Davy 1969, p. 203). Crystal & Davy (1969) draw attention to sentence length in legal language. They note the extreme length of sentences with arrays of subordinate devices and the repetition of lexical items and a scarcity of anaphora. This is because legal experts want all the necessary information to be presented in one single sentence. The reason behind this is that one can avoid possible legal challenges resulting from problems of coherence of words. Crystal & Davy (1969, p. 201) therefore indicated that one legal sentence is a self-contained unit by putting connective information into the form of a very complex sentence which is capable of standing alone.

Bahtia (1997, p. 208) also states that:

> Legislative texts are known for [...] long and complex sentences, typical use of qualifications to express complex contingencies. In order to make legislative statements not only simple, clear and unambiguous, but all inclusive also, these qualifications are inserted at various points in the syntax of legislative statements. They also tend to introduce excessive information load at various points in the syntax of such statements, thereby creating barriers to effective understanding of such statements. In order to be able to understand and, to some extent, translate legislative provisions, whether from one language to another or from one audience to another, one is inevitably required to take into account these difficulties.

Over and above the sentence level, legal English has a number of distinctive features on the clause-level. Clauses in legal language contain a large number of adverbial elements, which add complexity to clauses and sentences as well. In order to pursue precision, an adverbial element is often placed in a peculiar position. This can be seen in one of the examples from Crystal & Davy (1969, p. 204), "a proposal to effect an assurance with the Society" is described in legal language as "a proposal to effect with the Society an assurance". The placement of the prepositional phrase between the verb and the object is odd in ordinary language, but it clarifies that "with the Society' is solely modifying the verb "effect", but not the noun *"assurance*". Adverbial elements are often coordinated, which makes legal English more complicated. The use of "and" or "but" with adverbial clauses makes the whole clause longer and more complex. Tiersma (1999, p. 65) interestingly indicated that the unusual sentence structure in legal English is a trace from the free order pattern of Latin.

Nominal expressions in legal documents show the distinctive law-language features: long and complex resulting from the post modification of nouns. The subject and the verb are distantly located in legal language because of multiple embedding and repetition (Gibbons, 2002). The extensive use of nominalization is a marked characteristic of legal English (Crystal and Davy, 1969). Nominalization is the use of nouns in preference to verbs. Maley (1994) states that nominalization is most likely to be used in procedural sections in passive clauses with agent deleted.

Apart from long and complex sentence structures found in most legal languages, there are also syntactical peculiarities to each legal language. In legal English, negation, complex structures, passive voice, multiple negations, and prepositional phrases are extensively used.

Legal drafters have a tendency to use passive forms rather than active forms because "passive permits an indirect and formal tone with which lawyers instinctively feel comfortable" (Haigh, 2004, p. 37). However, this

can lead to lack of clarity. Crystal and Davy (1969) point out that complex conditional is very common in legal English. Multiple negatives are common in legal English register. They are expressed in "unless", "except", etc. (Haigh, 2004, p. 39).

The Usage of "shall", "may", and "may not" is also common in legal language. "Shall" is used in official documents to show a law, command, promise, etc. For example, "All payments shall be made by the end of the month", "shall" here is different from the auxiliary verb which indicates the future tense. "May" is used to refer to the possibility that someone may do something in a certain way, or that something may be done in a certain manner. For instance, "The Second Party may assign this Agreement to the third party without a prior written consent of the First Party". "May not" is used to indicate the opposite, as in "The Second Party may not assign this Agreement to the third party without a prior written consent of the First Party." (Sabrah, 2003, pp. 49-50)

3.2.1.3 Lexis

In terms of legal lexis, a distinctive feature of legal language is the complex and unique legal vocabulary found in different legal languages. This is a universal feature of legal language but different legal languages have their own unique legal vocabulary. It is the most visible and striking linguistic feature of legal language as a technical language. The legal vocabulary in each language is often extensive. It results from and is reflective of the law of the particular legal system concerned. In translation, due to the differences in legal systems, many of the legal terms in one language do not correspond to terms in another, the problem of non-equivalence is a major source of difficulty in translation.

Furthermore, within each legal lexicon, there are also peculiarities, and they do not always correspond in different legal languages. For instance, studies have identified specific linguistic characteristics of the English legal language. The English legal lexicon is full of archaic words, formal and ritualistic usage, word strings, common words with uncommon meanings and words of over-precision, among others (see Mellinkoff 1963, Danet 1980, Bowers 1989, Tiersma 1999).

An early study of legal language is the work of Mellinkoff (1963), who discuss the peculiarity of English legal language from the perspective of the lexicon.

Mellinkoff present the following characteristics of the lexicon of legal language:

(1) Frequent use of common words with uncommon meanings
(2) Frequent use of Old and Middle English words once in use but now rare
(3) Frequent use of Latin words and phrases
(4) use of Old French and Anglo-Norman words not in the general vocabulary
(5) the use of terms of art; use of argot
(6) frequent use of formal words
(7) deliberate use of words and expressions with flexible meanings

The use of common words with uncommon meaning indicates that the meaning of a certain word which legal experts share among themselves is a peculiar meaning of the word for lay people. For example, the term "action" means "lawsuit" for lawyers, but obviously the meaning is not commonly used. Tiersma (1999) defined this usage as legal homonym.

The next usage is Old and Middle English. Old and Middle English have influenced present-day English. Archaic expressions borrowed from old English, and are not normally used in modern Standard English, except for legal documents and perhaps poetry, are one of the distinctive features of legal language. Words such as "hereof", "thereof", and "whereof" (and further derivatives, including -at, -in, -after, -before, -with, -by, -above, -on, -upon etc.) are not often used in ordinary English. They are used in legal English primarily as a way of avoiding the repetition of names of things in the document, for example, "the parties hereto" instead of "the parties to this contract". Likewise, -er, -or, and -ee name endings in names and titles, such as employer and employee, or lessor and lessee, in which the reciprocal and opposite nature of the relationship is indicated by the use of alternative endings. This practice is derived from Latin (Van Dijk, 1981, p. 279).

Not only Old and Middle English but also Latin words are frequently used in legal English. An example is "certiorari[4]". Another linguistic area, which has influenced legal English, is Law French, which is mostly composed of French words of Old French and Anglo-Norman origin. All these expressions are put in a single group, legal archaism.

Mellinkoff furthermore stated that legal terms of Old/Middle English, Latin and Law French sometimes appear in sequences of two (doublets) or three (triplet). Tiersma (1999) defined a list of semantically related words as legal synonym. An example is "rest", "residue" and "remainder".

In addition to the ancient words, technical words with specific meanings, which are called terms of art, are used in law as well as other specialized fields. An example is "felony"[5]. Similar to terms of art, argot is

also used. The difference between terms of art and argot is that argot is a specialized vocabulary exclusively used among in-group people whereas terms of art are the specialized vocabulary used by both specialists and non-specialists. However, Mellinkoff indicated the boundary between the two is not clearly defined. A word like demur[6] is a technical term when officially used in the courtroom, but could well be argot when used by one lawyer to another at a cafeteria in the courthouse.

For the purpose of adding a ceremonial quality onto legal English, a formal expression such as "approach the bench" instead of "come here" or a euphemistic expression like 'the deceased" are used. Mellinkoff (1963) believes that the use of "formal words" is a distinctive feature of the language of law. They are characterized by being dignified, ceremonial, and polite expressions. The preference of "shall" over "will" is seen as a formal feature in "Law shall prevail". In legal drafting, non-standard terms are never used. Instead, highly formal words are usually employed. For instance, the word "deem" instead of "consider", the word "liable" instead of 'responsible". (Sqires & Rombaur 1982, p. 103).

Melinkoff (1963) refers to another distinctive feature in the language of the law, which is the choice of terminology. Lawyers make use of a good number of flexible words and phrases in their legal writings. Amongst these are the following: "adequate", "approximately", "clean and—neat", "promptly" etc.

Following Mellinkoff's work, linguists elaborated the analysis of the legal lexicon. Crystal and Davy (1969) point out that descriptive adjectives like "splendid" or "happy" and intensifying adverbs like "very' or "extremely" are rarely used, and that abstract nouns such as "declaration" or "stipulation" are commonly used in legal documents.

Alcaraz and Hughes (2002, pp. 16-18) classify legal lexis as follows:

1. Functional items – grammatical words and phrases that have no direct referents either in reality or conceptual;
2. Symbolic (or representational) items – all the terms that refer to things or ideas in the world of reality. This group can be further divided into: purely technical terms, semi-technical terms and shared, common or "unmarked" vocabulary
   a) Purely technical terms: terms, found exclusively in the legal sphere, that have no application outside. They can be one-word terms "*barrister*" or whole phrases "*bring an action*". Some of the theorists argue that these terms are so closely related to the legal system that they cannot be translated, but only adapted. Therefore, a number of terms is often left untranslated e.g.

"*estoppel*[7]", *"trust"* (Alcaraz and Hughes 2002, p. 17). The terms are often highly culture-bound, and thus are easy to distinguish from the rest of the lexical items of any legal text. Alcaraz and Hughes (2002, p. 17) refer to this group of legal vocabulary as "true terms of art". An examples is "Cassationالنقض ".

b) Semi-technical or mixed terms: words or phrases that have acquired additional meaning in addition to their common meanings (issue, consideration). Their number is constantly growing to meet the developing needs of the society.

Moreover, semi-technical terms are semantically more complex than the other two groups of legal terms i.e. purely technical and non-technical or everyday vocabulary, and their translation is therefore complicated by their additional and often connotative meaning, the range of partial synonyms and the context. Examples in English are "maintenance النفقة" to "frame لفَّق" and in Arabic like الطعن challenge - الاستئناف Appeal"

c) Everyday vocabulary or non-technical terms found in legal texts (paragraph, subject-matter). These terms are general words that have maintained their everyday meaning without acquiring legal import but regularly occur in legal texts. An example is like the word "Section" which might be a problematic term, as it could be translated in Arabic as قسم – باب – جزء – فقرة.

Cao (2007, p. 54) gives a good example of such an obvious concept as that of a "theft", which the researcher will try to extend to Arabic as well. In English law, theft is the *"dishonest appropriation of property belonging to someone else with the intention of keeping it permanently"*. (English Theft Act, 1968). In the Arabic Republic of Egypt, the concept of theft is defined in a very different way.

The Egyptian Penal Code offers different kinds of theft which have in common only the first part of the definition: *"Whoever appropriates a thing belonging to someone else by taking possession of it shall be a thief*". (Article 311 of the Egyptian Penal Code No. 58 of the year 1937). This definition does not explicitly require dishonesty or an intention to keep the stolen thing permanently. Even though *theft* is routinely translated as "سرقة[8]*"* and vice versa and everyone would agree that it means basically the same, the legal concepts behind these terms are not equivalent. Cao (2007, p. 33) proposes that because translating legal texts is a rather relative affair, "equivalence is a combination of, or compromise between,

the two basic types of constraints that draw from the incompatible poles of the target system and the source text and system".

Chapter Five of Part Two deals, in some detail, with the syntactic features of contracts, as a sub-genre of legal texts in Arabic and English.

3.3 Purpose of Translation of Legal Texts

Language is central to the law, and law as we know it is inconceivable without language. (Gibbons, 1994, p.3). The purpose of translation typically has been used to transfer the SL texts to equivalent TL texts. In general, the purpose of translation is to reproduce various kinds of texts—including religious, literary, and legal texts—in another language and thus making them available to wider readers. (Ordudari, 2007, p. 1).

Larson (1984, p. 3) states that translation is transferring the meaning of the source language into the receptor language. This is done by going from the form of the first language to the form of a second language by way of semantic structure. It is meaning which is being transferred and must be held constant.

Newmark (1988, p. 5) states that translation is rendering the meaning of a text into another language in the way that the author intended the text.

Translation is the process of transferring meaning from the SL into the TL, for example, from English into Arabic or from Arabic into English. The legal translator must be very careful in transferring the meaning due to the fact that meaning is very important in translation activity. If the translator cannot get the right meaning from SL, the result of the translation will be misled.

Legal translation is a special type of Language for Specific Purposes (LSP) translation involving cross-linguistic communication in the legal context. In contrast to other types of LSP translation, legal translation tends to involve more culture specific components (Biel, 2008, p. 22).

This book focuses on translating English and Arabic legal texts – legal texts originating in two major legal systems. This fact draws those legal texts even more apart and numerous problems of conceptual (non)equivalence arise. Every translator of legal texts must face and finally try to solve the tension between the need of legal certainty and the fact of linguistic indeterminacy. Knowing the concepts behind the terms is more important in legal translation than in other translational areas. Translation of legal texts seems to stand at the crossroads of legal theory, language theory and translation theory, as Cao writes (2007, p. 7).

Cao (2007, pp. 10-12) proposes the following communicative purposes of legal texts, and subsequent purposes of translation of legal texts:

1. Normative Purpose–prescriptive laws granting rights and imposing obligations
2. Informative Purpose–mostly descriptive, scholarly works and legal commentaries, correspondence between lawyers

The communicative purpose of the SL text and the TL text may not be the same. Cao further classifies legal translation into three categories, according to the purpose of the TL text:

1. Translation for Normative Purpose – translation of the law. The TL text will be regarded as authoritative and have the same or similar effects as the SL text. This situation is typical of bilingual jurisdictions or the European Union legislation. These texts may be statutes, directives and regulations or even private documents if they are legally binding. In this category, the communicative purpose of the SL and TL texts are identical.
2. Translation for Informative Purpose – only to provide information to the TL readers: the SL text is enforceable, the TL text is not. This category includes court decisions, or even foreign statutes. The original texts and its translation may have different communicative purposes.
3. Translation for General Legal or Judicial Purpose – primarily informative and mostly descriptive. This group includes translation of various records and certificates, witness statements or expert reports used as evidence in court proceedings. Such documents may have legal consequences. Moreover, this category may include texts that are not written by legal professionals.

3.3.1. Systemic Differences

Law and legal language are system-bound. They both reflect the history and traditions of the said country. Each country has a specific legal system with specific concepts. Although law in general is a universal concept, the same cannot be said for the particular legal concepts within legal systems. The procedures, application of laws and institutions, differ from one another, reflecting the differences between societies. Legal

translation involves translation from one legal system into another (Cao 2007, p. 24).

3.3.2. Problematics of Legal Translation

Legal language, as with any other language, has its own specific users: they may be judges, lawyers, legal professors or even lay persons. Linguistic sources of difficulties arising in translation of legal texts are generally speaking of two kinds: the style – in a very wide sense, which for the purpose of this moment includes also "the unstated conventions by which language operates" (Cao, 2007, p. 28); and the terminology. Legal language has developed to meet the demands of the particular legal system. The basic difficulty arising when translating legal texts is that of terminology and equivalence of individual concepts.

Legal language has its fixed conventions: one law is linguistically very similar to another and variations are minimal. According to Joos (1962), legislative language clearly falls in the category of formal or even frozen style. Identifying the linguistic characteristics, or style indicators, of legal English on the basis of which it is possible to define it as formal or frozen, and distinguish it from other variants, has been one line of investigation during the last few years. It often contains a number of characteristics not commonly found in everyday language. Some of them may give rise to ambiguity in the meaning of the text, thus causing problems in the comprehension and the translation of those texts. As one of the varieties of legal texts, contracts not only share many of these characteristics, but also contain others that may be unique to their genre.

3.3.3. Cultural Differences

Legal translation requires of a translator to be fully linguistically proficient in the source and target languages, as well as to be perfectly familiar with the cultures and legal systems of both the source and the target languages.

Language and culture or social contexts are closely integrated and interdependent. Halliday (1975, p. 66) defines "culture" as "a semiotic system" and "a system of meanings" or information that is encoded in the behavior potential of the members. Snell-Hornby (1988, p. 39) argues that, in translation, language should not be seen as an isolated phenomenon suspended in a vacuum but as an integral part of culture, and that the text is embedded in a given situation, which is itself conditioned by its socio-cultural background (Snell-Hornby 1988, p. 42, quoting Hönig and

Kubmaul 1982). The concept of culture as a totality of knowledge, proficiency and perception is fundamental to the integrated approach to translation as advanced by Snell-Hornby (1988, p. 42).

Christiane Nord writes:

> Translation cannot be considered a one-to-one transfer between languages. […] A translation theory cannot draw on a linguistic theory alone […]. What is needed is a theory of culture to explain the specificity of communicative situations and the relationship between verbalized and non-verbalized situational elements. (Nord, 1997, p. 11).

In this connection, law is an expression of the culture, and it is expressed through legal language. "Each country has its own legal language representing the social reality of its specific legal order" (Sarcevic 1985, p. 127). Legal translators must overcome cultural barriers between the SL and TL societies when reproducing a TL version of a law originally written for the SL reader. In this connection, Weston (1983, p. 207) writes that the most important general characteristic of any legal translation is that an unusually large proportion of the text is culture-specific. The existence of different legal cultures and traditions is a major reason why legal languages are different from one another, and will remain so. It is also a reason why legal language within each national legal order is not and will not be the same as ordinary language.

3.3.4 Ambiguity

"Ambiguity of language is to be distinguished from unintelligibility and inaccuracy their significance seems doubtful and uncertain to persons of competent skill and knowledge to understand them." (Black's Law Dictionary).

A large part of legal English and Arabic vocabulary consists of words that carry both specific legal meanings and ordinary use meanings. For a translator, it is necessary to discern the meaning correct in the circumstances. To translate polysemous words correctly, the 'context of utterance" – the immediate physical, temporal and verbal environment in which the communication takes place – becomes crucial (Alcaraz and Hughes, 2002, p. 37). An example is: "I went to the bank", the word "bank" could give the meaning of "a business place" or "a land along the side of a river".

Another type of ambiguity may arise from the syntax. To solve it is not in the scope of a translator's competence. Alcaraz and Hughes (2002, p. 45) state that "[s]ince the ambiguity is inherent in the syntactic structure of

the sentence, any translation that reproduces this is bound to be correct, in the sense that it will be equally ambiguous, and for the same reason. And that is what translators must do in cases of this kind, since it is no part of their business to decide between alternatives (…)"

3.4 Legal Translation

Legal translation is a special and specialized area of translational activity. This is due to the fact that legal translation involves law, and such translation can and often does produce not just linguistic but also legal impact and consequence, and because of the special nature of law and legal language. Moreover, as is noted, the translation of legal texts of any kind, from statute laws to contracts to courtroom testimony, is a practice that stands at the crossroads of legal theory, language theory and translation theory (Joseph, 1995, p. 14). Therefore, it is essential that the legal translator have a basic understanding of the nature of law and legal language and the impact it has on legal translation.

In this age of multilingualism and communication revolution, the legal translator plays a major role in the process of communication within diverse legal systems. "Translation of legal texts leads to legal effects and may even induce peace or prompt a war" (Sarcevic, 2000, p. 1). Due to the current freedom of social, political and economic interaction between people from all over this global village, the demand for legal translation is more pressing than ever.

Traditionally, translation has been considered as an interlingual transfer process. As defined by Catford (1965, p. 1), translation is "an operation performed on languages: a process of substituting a text in one language for a text in another." Liberated from the constraints of traditional translation straightjacket, the translator is "no longer a passive mediator whose main task is to reproduce the source text" (Sarcevic, 2000, p. 3).

Sarcevic (2000) attempts to provide a theoretical basis for legal translation within the framework of modern translation theory. She argues that:

> Like other areas of translation; the translation of legal texts is (or ought to be) receiver-oriented legal texts authenticated in two or more languages are interpreted and applied by courts in various plurilingual jurisdictions. It is not concerned so much with methods of interpretation but rather with the implications of decision-making process of translators. Above all, it attempts to show how translation strategy is affected by the communicative factors of reception in bilingual and multilingual jurisdictions. Since the

> success of an authentic translation depends on its interpretation application in practice, the ultimate aim is to encourage interaction between translators and the judiciary (p. 1).

Sarcevic (2000) regards translation as an act of communication between text producer and receiver. She makes a distinction between direct receivers of legislation, which include all persons affected by the particular instrument, and indirect receivers who are the specialists who have the authority to interpret and apply such instrument. Thus, in a plurilingual setting, the translator is the third participant in this process of communication. Translation of legal documents including contracts is authoritative only if it has been approved by the law. All authenticated translations are just as binding as the original text. Hence, they are not regarded as translations (Sarcevic, 2000, p. 20).

Legal translation requires usage of methodology according to the challenges it poses, challenges that are different from the ones connected to other types of specialized translation. According to Newmark (1988, p. 151), specialized translation can be divided into two categories: technical and institutional translation. Technical translation is non-cultural and therefore universal, therefore the terminology is not culture dependent; it is mostly known internationally. Institutional translation, which includes legal translation, is culture dependent, i.e. it is typical for a particular culture.

Legal translation is a specialized, culture dependent translation, and it is the legal translators' task to stay faithful to the intent, tone, and the format of the original, source legal document, yet make the text clear and understandable to the receiver, without taking any creative liberty, which is considered unacceptable in the formal constraints of legal language.

Experienced legal translators deal with a plethora of translating challenges. The direct translation of a name of an institution, a concept, or legal terminology, which is understood equally well in the TL, as the original was in the SL may not be found. The technique employed in such cases is referred to as finding a functional equivalence, and it is described by Newmark as "a procedure that occupies the universal area between the SL and the TL" (1988, p. 83).

Translation, as Vermeer (1989) understands it, is not just a process of seeking an equivalent within traditional linguistic tools, but a whole act of translation including, amongst others, the element of consultancy. The aim is to attain a specific translational goal. This aim lays the foundations for the Skopos Theory, which is referred to by Vermeer as follows: "The word skopos, then, is a technical term for the aim or purpose of a translation."

(Vermeer 1989, p. 173). Vermeer's theory of purposeful action, as Nord (1997, p. 12) calls it, or the functionalist approach to translation, which is a term more associated with Nord's findings, establishes the intended receiver, or audience, of the target text as being the main factor conditioning the actual translation. The translation's characteristics depend on the audience's expectations, cultural requirements and communicative needs.

Legal translators are obliged to decipher all of the meanings included in the SL through the detailed analysis of its contents. Such analysis will not only be of a linguistic nature, but it also necessitates some legal knowledge of the text's contents if it is to be understood properly. This means that the translator must engage in the analysis of some of the legal bases of the text's meaning. The best way to do this is to find some accessible information, or credible consultants through which any possible doubts can be dispelled. Following this, if the translator is sure about what each part of the source text exactly means, the next level of the translation can take place, namely seeking out the best vocabulary and linguistic structures with which to express the meanings included in the source text and produce a perfectly understandable and natural target text.

Having studied the legal translation and the legal texts in general, it is imperative to study the features and characteristics of legal language with special reference to that of contracts. This is the topic of the next chapter.

CHAPTER FOUR

CONTRACTS

According to Black's Law Dictionary,

> "a contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side. A contract is an agreement by which one person obligates himself to another to give, to do, or permit, or not to do, something expressed or implied by such agreement".

Contracts are agreements between two or more parties to exchange performances in a given situation for a specific purpose and to establish the agreement that the parties have made and to fix their rights and duties in accordance with that agreement. The legal actions to be performed or not performed are set forth in the substantive provisions in the form of obligations, permissions, authorizations and prohibitions, all of which are enforceable by law. (Sarcevic, 2000, pp. 133-134).

According to Mohammad et al (2010), in today's world, contracts are the legal documents ordinary people are likely to be most familiar with. A contract does not have to be formally written down and signed to be legally binding. Oral contracts are valid in law, though there may be difficulty in proving them if there are no witnesses. Given this freedom of form, there are some basics that distinguish contracts from other forms of agreement, and which must be present for a contract to be recognized as such and thus enforceable. In the first place, there must be an agreement between two parties, who may be individuals or groups, nonprofessionals or juristic experts. Second, there must be valuable consideration given and received by each party. In other words, each party promises to give something in exchange for the other party's promise to give something else in return. Normally, this consideration takes the form of money, goods or services, but it may be practically anything so long as it has some identifiable worth. Thus, in this mutual offer and acceptance, each of the two parties may be

viewed as both "promisor" and "promisee". Third, the parties must intend their promises to be acted on and to be legally binding. Insignificant or vague actions are not constructible as contracts, nor are promises to undertake the impossible. Fourth, the subject matter of the contract must not be illegal or "tainted with illegality"; so-called "contract killings" are not contracts in law. Fifth, the contract must be freely entered into by both parties and both should be of equal bargaining power. Any agreement brought on by fraud, unreasonable influence or oppressive means may be set aside, as may an unfair bargain or one-sided agreement bargain.
(Alcaraz and Hughes, 2002, pp. 126-127).

Sarcevic (2000) argues that legal instruments such as contracts are regulatory in nature. She also adds that these are now considered as normative texts which "prescribe how the members of a given society shall act (command), refrain from acting (prohibition), may act (permission) or are explicitly authorized to act (authorization)". (Sarcevic, 2000, p. 11).

Translating legal jargon in contracts can be said to elongate over a continuum that involves literal or formal translation at one end and free or dynamic translation at the other. Therefore, literal or standardized translation can be adequate in translating purely technical terms, since such terms are context-independent. On the other hand, semi-technical terms are context dependent. Consequently, the legal translator should opt for a strategy that will enable him/her to capture and convey the intended meaning.

As Gubby (2007, p. 170) clearly writes, contracts are specific types of agreement between two or more parties that are binding in law. Contracts are only such agreements that are legally enforceable. The core of every contract is a consensus on its content and on establishing a legally binding relationship. Contracts create the "law between the parties" and generally no one can be entitled or bound by the terms of a contract if s/he is not a party to it".

4.1 Language of Contracts

Contracts can be considered a sub-genre of legal texts. They are drafted for a specific purpose; they seem to have a distinctive layout and a distinctive style from that of legislation or wills. In English there are even terms special for contracts. The actual wording of a contract only becomes important when a dispute arises and litigation is at hand.

Newmark (1982, p. 47) suggests that when dealing with legal documents like contracts that are concurrently valid in the TL, the translator should focus on a communicative approach. Vermeer agrees with the view that legal criteria should be taken into account when selecting the most appropriate translation strategy since the meaning of legal texts is determined by the legal context:

> "For instance, in regard to contracts, the decision whether and to what extent target-language formulae should be used is determined primarily by the law governing the contract. This fact is essential because it determines whether the contract will be interpreted according to the source or the target legal system." (Vermeer, 1989, p. 99).

In official translations of contracts, the strategies used must focus on one main principle, which is fidelity to the source text:

> "Legal translators have traditionally been bound by the principle of fidelity. Convinced that the main goal of legal translation is to reproduce the content of the source text as accurately as possible, both lawyers and linguists agreed that legal texts had to be translated literally. For the sake of preserving the letter of the law, the main guideline for legal translation was fidelity to the source text. Even after legal translators won the right to produce texts in the spirit of the target language, the general guideline remained fidelity to the source text." (Sarcevic, 2000, p.16)

4.1.1 Layout

When creating the contract, particular care must be taken with regard to its overall layout so that none of its clauses are misinterpreted. The layout of Arabic and English contracts does not generally differ, the only visible difference being the English custom of giving titles to individual sections. According to Alcaraz and Hughes (2002), the basic sections of a contract are:

1. Title – descriptive phrase identifying the type of undertaking;
2. An introduction identifying the parties to the transaction;
3. Recitals – historical and economic reasons for concluding the contract, sometimes closely defining the nature of the parties' businesses. In English, this section is sometimes introduced by the word Whereas;
4. Definitions of terms used in the contract – an English feature slowly finding its way into other legal languages;

5. Operative provisions containing rights and obligations, usually introduced by a performative verb;
6. Various provisions (on applicable law, expressing the consideration, giving guaranties);
7. Testing clause – sentence introducing the signatures, sometimes containing the date and place;
8. Signature lines;
9. Schedules (annexes) – in case the contract refers to them;

According to Alcaraz and Hughes (2002, pp. 127-132), although there can be immeasurable disparities, contracts generally have the following textual features:

A. Commencement or premises

In the prefatory section, there is commonly some descriptive phrase identifying the type of undertaking. Parties of the contract are usually identified in this section.

B. Recital or preamble

In very formal contracts, parties usually recite the reasons that led them to construct such a contract. Commercial contracts sometimes follow this tradition by supplying details of parties' identities, interests and relations to one another and the overall purpose of the contract.

C. The operative provisions

This section begins with a clause pronouncing the existence of an agreement between the parties and giving force to it by using a performative verb such as agree, promise, undertake etc. The rest of the section is devoted to detailed specification of overall bargain and parties.

D. Definitions

If the parties believe that definitions are necessary in order to make their intentions clear, they can be invariably contained in the operative provisions.

E. Consideration

This section is dedicated to clarifying the nature of the mutual exchange of benefits between the two parties. Therefore, it is the legal sense of the term consideration as in "in consideration of" which means in exchange that is intended here.

F. Representation and warranties

This clause asserts any matter of fact necessary to guarantee the good faith of each party, such as assurances as to the quality of the goods sold or services provided, the right of each party to act in the contract, and the legal assumptions on which the contract is entered into.

G. Applicable law

It is common, especially in commercial contracts, for the parties to state which set of laws is to govern the agreement. It also clarifies which courts are competent in case of dispute.

H. Severability

This is an optional section in which parties may agree that if any part of the contract is deemed inoperative or unlawful, the rest of the agreement will remain valid and binding.

I. Signature

The signatories' names are printed legibly above or below their signatures, and if any of the parties are juristic persons, his/her professional capacity is appended.

J. Schedules

These are known as "exhibits", "appendices" or "annexes". They contain miscellaneous information of interest to the parties (e.g. shipping documents, technical specifications, power of attorney, or other similar materials).

This layout may serve for both the Arabic and English contracts. Particular provisions are structured to sections and subsections (or in Arabic articles and paragraphs). When translating a contract it is generally understood that the TL text layout should follow the original layout.

4.1.2 Syntax

The English language of contracts encompasses all the distinctive features of legal English that have been discussed before in this book. As the legal language, the syntax or the structure of contracts is lengthy and complex, often lacking punctuation and often introduced or divided by archaic words such as *"thereinafter"* or "*hereto"*. The verbs are almost in present tense, very often using *"shall"*. Repetition is also one of the features to assure absolute precision in meaning and certain terms that are defined in the same contract are capitalized.

Extensive use of conditions, qualifications and exceptions are the additional linguistic features, commonly employed to express complex contingencies. These peculiar linguistic features, according to Bhatia (1994), often create barriers to the effective understanding of such writing for the ordinary reader including the translator. Thus, to be able to understand and translate legislative provisions, one is inevitably required to take into account the typical difficulties imposed by some of these factors (Bhatia, 1997, p. 208).

The Arabic language of contracts compared to the English language of contracts is fairly simple, often avoiding lengthy sentences. The rights and obligations are usually imposed by past tense e.g. (اتفق – باع وأسقط وتنازل) or – less often – by present tense, such as (يعتبر). The language of contracts is easier than the legal language, as the contracts are written and drafted by any lawyer (experienced or inexperienced) for different purposes.

4.1.3 Lexis

The lexicon of contract has its own specific features. Legal language in contracts makes use of words that have an ordinary meaning and at the same time a technical meaning, which may cause understanding problems and subsequent mistranslation. Such legal words frequently encountered are: "consideration" (the cause, motive, price, or impelling influence which induces a contracting party to enter into a contract[9]), "performance" (the fulfillment or accomplishment of a promise, contract, or other obligation according to its terms[10]), or "remedy" (the means by which the violation of a right is prevented, redressed, or compensated[11]). (Cao, 2007, pp. 67-68 and Gubby, 2007, pp. 155-167). English and Arabic contracts contain a section determining the precise meaning of terms used in the text of the contract to ensure legal certainty. It should not be forgotten that they are definitions by agreement (Alacaraz and Hughes, 2002, p. 30). Naturally, each contract may define one and the same word differently; therefore it is no use for a translator often dealing with such contracts to use the definition sections as glossaries.

English and Arabic contracts define the terms at the beginning of the texts, and here is subsequent capitalization of such defined expressions in English; the Arabic contracts use the references. Definitions should be included for words and phrases that are unclear or are frequently used in the contract. If the same phrase identifying a thing or entity is used frequently throughout the contract, a shortened form should be indicated early in the document to avoid repetitive use of a needlessly long term or phrase.

Having studied certain Arabic and English contract features, chapter seven is to introduce the empirical study and analyze the two contracts.

PART II

CHAPTER FIVE

APPLICATION

5.1 Introduction

In order to point out the problematic issues of the translation of legal texts, the researcher has chosen two texts, one in Arabic and one in English and commissioned their translations to two translation offices. The research questions are focused primarily on the overall quality of the translations done by the two offices, and specifically on the translational way-outs and solutions of some problematic points and the linguistic analysis of the two translated contracts, which are described when analyzing these two texts.

5.1. 1. Choice of Texts

The researcher has chosen two contracts to deal with. The Arabic text is a contract for the sale of allotments; the English text is also assignment of allotments agreement. The researcher picked up the first contract of sale that turned up in the search engine. Both texts contain an average amount of Arabic and English legalese and because of the scope of this study; the two translated texts should not be too long: the whole Arabic contract is only about three pages long.

5.1. 2. Choice of Offices

As a representative sample, the researcher cooperated with two legal translation offices. Both of them are affiliated to two different law firms and are advertising their competence in translating legal texts and both of them are located in Cairo. These two offices emphasize their co-operation with lawyers as they are affiliated to a law firm, but the researcher has commissioned the two texts to be translated "normally" by a professional translator, i.e. not specifically translated and/or edited by a lawyer. But, having the texts translated by an office, the researcher does not know who in fact did the two translations; therefore, the researcher cannot foreclose

the possibility that one or the two texts were actually translated by a lawyer.

5.1. 3. Procedure

For centuries, legal translators have devotedly followed the syntax of the source text as closely as possible, mainly out of fear that any changes might disturb the thought process. This fear disappears when translators understand how they can express the intended underlying relations in a legal text. In navigating between the source text and the target text, several translation procedures can be used to achieve this goal. Such procedures can be seen as problem-solving techniques that help devise and reproduce the intended meaning. (Asensio, 2003).

The purpose of this research is on the overall quality of the translations done, and the translational way-outs and solutions of some problematic points and the linguistic analysis of the translated contracts, which are described when analyzing these two texts. Therefore, to answer the research questions, the translational solutions of the two translations of the same text are analyzed and contrasted. Generally, the focus is on three points: the overall style (level of legalese, understandability of the TL text, syntax and some of the concrete translational solutions), the understandability of the source language text and the translational solutions of some of the concepts.

To judge the accuracy of the Arabic legal style, legal dictionaries such as Faruqi's Law Dictionary and Black's Law Dictionary and Oxford Dictionary of Law in addition to www.thefreedictionary.com are used. For illustration, the Google search engine (https://www.google.com.eg) and the British National Corpus (http://www.natcorp.ox.ac.uk/) are used for the purpose of searching in order to judge the frequency of different translational way-outs.

5.1.4. Hypotheses

As the researcher commissioned the two translation contracts of sale to two translation offices that are translating legal texts, the final texts are expected to be free from significant shifts in meaning. The researcher does not believe that an average translator of legal texts fulfills all the requirements laid down by Cao (2007, p. 37), especially when translating into a foreign language, but the text is expected to be understandable and to adhere to the original composition of the target language in legal writing. The majority of translators working for Arabic translation offices

are Arabic native speakers; therefore the researcher expects the translations into Arabic to be better than the translations into English because they are native speakers of Arabic.

5.2 Translated Contracts

Arabic into English: Allotments Sale Contract (Appendix A)

This contract has a heading (عقد بيع حصص) stating the purpose of this contract followed by an introductory sentence and identification of the two contracting parties. The content of this contract is structured into articles, and it is concluded by the signatures of the two contracting parties. This contract serves as a frame for future individual transactions between the two contracting parties. Instead of concluding a contract every time a transaction is carried out, one contract–Contract for the Sale of Allotments–provides for all the transactions.

English into Arabic: Assignment Of Allotments Agreement (Appendix B)

This agreement sets the rights and obligations concerning assignment of allotments. The agreement contains some features of English contracts: a recital (beginning with "whereas"), general articles, the consideration and formula closing the contract and the signatures' section.

5.2.1 Overall Style and Features

It is hard to fully appreciate the nature of contracts without having some familiarity with their features. The following sections describe the general characteristic features of English and Arabic contract language. The two translations from Arabic into English are referred to as **Text AI** and **text AII**. **Text AI** seems, at first sight, to resemble more the typical legal English contractual style. The use of the verb "*shall"* and "*may"* and the abundance of "*hereof"*, *"hereto", "thereof"* point very clearly to the English legalese. The use of "*pursuant to"* (text A, Preamble part) is more idiomatic and formal than "*according to"* (text B, Preamble part), although the meaning is almost the same. The introductory sentence "تحرر بين كلا من" is translated in **Text AI** as "*drawn up by and between"*, in **Text AII** as "*concluded by and between"*. Both versions are possible and correct, and both of them use the coupling "*by and between"*.

In the translation from English into Arabic, the two translations (referred to as **Text BI** and **text BII**) have managed to convey the meaning of the SL text without significant shifts. The style and syntax of both of the two texts follow the original structure of English texts. The purpose of a contract is to communicate the subject matter (the agreement) between both parties.

In comparison with English legal discourse, Arabic legal discourse has its own idiosyncratic features and distinctive structures. Legal Arabic texts are similar in many aspects to their English counterparts. Nonetheless, because of the linguistic differences between the two languages in form, structure, style, meaning, and organization etc., the two registers differ considerably. Emery (1989, p. 10) states that:

> Arabic legal texts exhibit their own features of structure and style. They make more use of grammatical cohesion (through reference and conjunction) and of finite structures than their English counterparts, and less use of passives. In addition, they are not characterized by the use of archaic vocabulary and morphology. The two languages differ in their patterns of nominalization, creation of binominals and in their use of highlighting and text markers.

The layout of Arabic legal contracts differs to some extent from that of the English contracts. This asymmetry at the level of layout between English and Arabic legal texts creates a dilemma for the translator, i.e. to keep the original layout features or to adopt those of the target language. From a translational point of view, most theorists within the field of translation recommend remaining faithful to the layout of the original legal texts in order to ensure that the translated contract communicates the same layout features of the original contract.

Capitalization

Capitalization is another area which could cause problems: example "according to the law" and "according to the Law". The first refers to the nature of law in general, while the second refers to the law under consideration.

It can be inferred from the translation in **Text AI** and **Text AII** that the phrase "NOW, THEREFORE," is written in capital letters as an emphasis of its importance after whereas. Also, the phrase "BY AND BETWEEN" is capitalized. It distinguishes the paragraph that introduces the two contracting parties. Both parties in the contract like the two words "Seller" and "Purchaser" and , "Company" begin with a capital letter since they are defined and refer to a specific meaning with a particular content. Both of

the two defined parties will be capitalized all over the contract. Also, the word WHEREAS is printed in bold to refer to the preamble of the contract. The rest of the contract, one can easily notice that much attention is given to capitalization because they are defined in the same contract.

English Legal texts, particularly contracts, have a certain layout norms adopted when they are drafted. Some of these are paragraph division, capitalization, bold typing, and italicization etc. Each of which has a function within legal texts; their use renders these texts more cohesive and coherent.

The source language text capitalizes certain words that are explained and defined in the definition section of the contract.

Technical Terms

English legal terminology is naturally Anglo-Saxon with all the characteristic features of native vocabulary. "The range of vocabulary in legal language is extremely wide, since almost anything may become the subject of legislation" (Crystal and Davy, 1969, p. 207).

There are phrases expressing extreme precision and these can be categorized as follows: (i) absolute, such as: "all", "none", "never"; (ii) restrictions, such as: "and", "no more" and "no other purpose'; (iii) unlimiting phrases, such as: "including but limited to", "shall not be deemed to limit" etc. (Mellinkoff, 1963, pp. 11-23).

Everyday English words that are used in law have different meanings from the everyday usage. For example, the familiar term "consideration" refers, in legal English, to contracts, and means, an act, forbearance or promise by one party to a contract that constitutes the price for which the promise of the other party is bought (Oxford Dictionary of Law). An example provided by Van Dijk (1981) about the use of common terms with uncommon meaning is the term "assignment" which is used in legal contexts to refer to the transference of right not to its more familiar sense "task".

Technical terms are terms found exclusively in the legal sphere and have no application outside it. Lexical units of this type are distinguished from the others in that they are monosemic and have long remained semantically stable within their field of application or having a single meaning. Hence, they may be said to be the least troublesome terms for translators in case of searching the accurate translation and the accurate meaning. However, they can be crucial in the context in which they occur, since the rest of the text dealt with will fail to cohere until such terms have been catered for. These terms are recognized as legalisms that are usually

listed in legal dictionaries. An example is "مخالصة" which was consistently translated by the two translators as "clearance". Regardless of the legal context, such a term will only be translated with this functional equivalent. Another example is "اللائحة التنفيذية" in the Preamble part which was translated by the two translators as "Executive regulations" which is a literal yet functional translation. Such terms are already established and agreed upon, and hence are listed in legal dictionaries with one monotonous and context-independent meaning.

Some technical terms are polysemic, which are much more numerous and are constantly growing in number as the law changes to meet the continuously changing needs of the society. Moreover, they are semantically more complex, presenting the translator with a wider range of choices. Translators dealing with terms of this kind face some problems for the word choice and the fact that the precise nuance is often context-dependent. An example of these polysemic technical terms is "تمهيد" which was translated in **Text AII** as "introduction" and translated in **Text AI** as "Preamble" which is the more formal term. Though the second expression is more commonly used in English contracts, however, the back translation of the first translation in **Text AI** in Arabic is "مقدمة" not "تمهيد".

Some terms are more commonly found in one area of the law or one legal genre than others are. These terms, which are most frequently used in contracts, are usually easier to understand and they tend to be contextually bound. In translating such terms, the translator has to observe the potential intended meaning of the original as well as stylistic and contextual constraints. These terms are more freely translated by the two translators. An example is the word "مشترٍ" which was translated with synonymous terms by the two translators. It was translated as "Purchaser" by one in **Text AI** and "Buyer" by the other one in Text B. The two choices are satisfactory while "Purchaser" is more formal than "Buyer". The translation of such terms found in legal texts is less standardized allowing the translators to choose from a variety of equally functional synonyms. Arabic legal language, like English legal language, has its own technical terminology (Emery 1989).

Another example:

- Court below[12]
- المحكمة الجزئية.

The term "court below" is equivalent to المحكمة الجزئية, which is used in legal contexts to refer to a lower court through which a case has passed.

Doublets and Triplets

There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept. Examples of this include "will and bequeath, "null and void". Such constructions must be treated with caution, since, sometimes, the words used mean, for practical purposes, exactly the same thing, and sometimes they do not quite do so (Van Dijk, 1981, p. 285). The reason for such lists of words is to be as comprehensive as possible. They also can add emphasis.

This is another problematic area in the translation of contracts, i.e. the excessive use of doublets and triplets. Most translators prefer to translate into the same number of words. For example, the doublet "بين كل من" was translated as "BY AND BETWEEN" by the two translators and also in **Text BI** and Text D, "By and Between" was translated as "بين كل من". Another example is "يقر ويضمن" in Article Three which was translated by one translator in **Text AI** as "confirms and warrants" and by the other translator in **Text AII** as "acknowledges and guarantees". Another example is "أي موافقات"which was translated by one translator in **Text AI** as "any approvals" in which the intended meaning is implied and present, and by the other translator in **Text AII** as "any and all approvals" in which coupling is used.

Another example is the term "Citation". Lexically speaking, this term means "the act of citing", while technically speaking, it means "An official summons, especially one calling for appearance in court" And it will be translated as استدعاء.

Legal Formulas

Most languages have formulas that traditionally separate the different blocks of information in a contract. They announce the information that follows, give internal organization to text, introducing and closing the document (Asensio, 2003). In many cases such formulas are old and have lost their denotative meaning. To translate their individual words according to their dictionary meaning is liable to produce nonsense; their literal translation is very ineffective. Replacing these with their functional equivalents can be much more efficient. Examples of these formulas and their different renderings by the two translators are "حيث إن الطرف الأول" which was translated by both translators using the term that is more formal "whereas". The translator in **Text AI** translated the word "بموجب" as

"Pursuant to", which may sound more impressive than "according to" as translated by the other translator.

In recent legal drafting, such formulas are more growingly abandoned and replaced with more functional, simpler equivalents that do not affect the interpretation or the validity of this part in any particular way.

Felsenfeld and Siegel (1981, p. 64) write in this regard "the archaic words "whereas" and "hereby" and the wordy phrase "pursuant to" are three of the worst examples of legalese [...] Yet these words are still prominently used in [...] statutes, honorary resolutions, ordinances, and executive orders. At long last, why not let them die?"

Here-and There-Compounds

Here-and there-compounds are usually used to specify every possible interpretation of the legal text. In contracts, hundreds of characteristic compound particles that are seldom used in daily life are excessively and most of the time unnecessarily used since the context can reduce the number of possible interpretations other than the one intended.

Deciphering these compound particles according to this simple rule is recommended. Whenever the particle begins with "here", it refers to the document at hand; whenever it begins with "there", it refers to a former document previously mentioned. Both translators translated "اتفق الطرفان" as "parties hereto" referring to the two parties of this contract. Another example in Article Four is "هذه الحصص" which is translated in **Text AI** as "these allotments" while in **Text AII**, it is "allotments thereof" which gives a different referent and a different meaning.

Another example:

- The contractor shall not assign the Contract or any part thereof, or benefit or interest therein or thereunder, without prior consent of the Employer.
- يحظر على المقاول أن يتنازل عن العقد أو أي جزء منه أو أي ميزة أو مصلحة فيه أو بموجبه دون موافقة مسبقة من صاحب العمل.

"Any part thereof" has been translated as "أي جزء منه" and "interest therein or thereunder" has been translated as "مصلحة فيه أو بموجبه".

Here is often used in legal documents in conjugation with preposition like words for purposes of reference. Here means **THIS document** or **THESE documents.**

For example: **hereby** = ***by*** *means of this agreement, document etc &* **hereto** = ***to*** *this document*

Like here, **there** is used in legal documents in conjugation with prepositions for purposes of reference. **There** means **THAT/THOSE thing(s) or person(s) mentioned**.
For example: **thereby** = ***by*** *means of that mentioned &* **thereto** = *to that mentioned &* **thereof** = *of that mentioned.*

Use of Anaphoric Devices

The use of such anaphoric words as "the same", "the said","the aforementioned" etc. in legal texts is interesting, since very frequently they do not replace the noun, which is the whole purpose of pronouns, but are used to supplement them. Legal drafter would rather repeat the same noun over and over again instead of using a pronoun. Such tendency is alleged to help with accuracy and precise reference (Haigh, 2004, p. 5).

An example of using such pronouns is:

- If Seller receives notice of any of the foregoing, Seller shall promptly notify Buyer of the same in writing.
- في حالة تلقي البائع إخطارًا عن أي من الحالات سابقة الذكر يقوم فورًا بإخطار المشتري بذلك خطيًا.

"The same" has been translated as "بذلك"

Unusual Prepositional Phrases

Van Dijk (1981, p. 285) reports a high frequency of "as to" in American legal English, and finds intensive occurrence of "in event of" instead of "if" and "any".
An example is:

- In the event of an increase in costs, we reserve the right to increase the prices.
- في حالة زيادة التكاليف يحق لنا زيادة الأسعار.

"in the event of" has been translated as "في حالة".

Testing Clause

Examples such as "*In witness whereof each party has caused this Agreement to be executed"* prove that English contracts are structured and formed as one very long sentence of a kind. Another example is *"Whereas ... parties hereto agree as follows…" "In witness whereof each party has caused this Agreement to be executed"*. The testing clause introduces the

signature lines. Arabic functional equivalent of this is "وبما ذكر" in Text BI and Text BII.

Distinctive features of legal contracts such as synonyms, technical terms, here-and there-compounds etc., doublets, personal construction and capitalization can produce more sufficient and more communicatively successful translations.

After examining the two contracts and the two translations of both of them, it can be said that contracts are among the most difficult documents to translate. Contracts are known for their traditional conventions, such as archaisms, synonyms and reference repeating (Alcaraz and Hughes, 2002). These factors affect the first part of a translator's work. As for the final part of his/her work, production, the temptation to translate literally and to follow the exact style of the original is rather powerful.

Another example:

- NOW, THEREFORE, the Parties hereby have agreed as follows:
- ولذا اتفق الطرفان بموجب ذلك على ما يلي:

"NOW, THEREFORE," has been translated as "ولذا"

The Nature of Punctuation

The lack of punctuation is due to a widespread belief among lawyers and judges that punctuation was unimportant, potentially confusing, and that the meaning of legal documents should be gathered solely from the words used and the context in which they were used (Van Dijk, 1981, p. 279).

As for the Arabic sentence, it does not depend primarily on punctuation. The syntactic structure is mainly predicated on the rules of language and parsing. For example,

خامساً: تم هذا البيع وقبل من الطرفين مقابل مبلغ ..... للحصص المبيعة سددت إلى الطرف الأول عند التوقيع على هذا العقد ويقر الطرف الأول بأن توقيعه على هذا العقد يعد بمثابة مخالصة نهائية وبائنة عن كامل الثمن المدفوع والمذكور بعاليه.

Another example:

أحضر الطرفين المتهم

The Accused brought the two parties.

According to Arabic, it has been understood that the subject is the word "المتهم" while the object is the word "الطرفين".

Another English sentence:

The girl says the boy is nice.

This sentence is not clear enough to be translated, it has to be punctuated, or otherwise, it needs to be rephrased as this is the nature of the English language.

The sentence could be punctuated as follows:

The girl says, "the boy is nice".

In this case, it will be translated as follows:

قالت الفتاة إن الولد لطيف.

The sentence also could be punctuated as follows:

The girl, says the boy, is nice.

In this case, it will be translated as follows:

قال الولد إن الفتاة لطيفة.

Modality

Another aspect of legal texts that gives rise to problems in their interpretation for the sake of application as well as in their translation is the question of modality.

Halliday & Hassan (1985, p. 86) talk about two kinds of modality: modalisation (usually referred to as modality) and modulation. The former deals with the varying degrees of obligation and inclination (Maley, 1994, p. 46), whereas modals of the second category are usually found in statutes and other legal documents (contracts, deeds of sale, insurance policies and so forth), those in the first category are often to be found in judges' orders and judgments, as they are more suited for the carriage of explicatory and argumentative, that is mostly subjective, statements.

The following clauses are taken from an agreement concluded between Egypt and Jordan before 1958.

1- على سلطات الطيران المدني لدى كل من الطرفين المتعاقدين أن تخطر سلطات الطيران لدى الطرف المتقاعد الآخر....
2- يجوز لسلطات الطيران لدى أحد الطرفين المتقاعدين...
3- تسري القوانين والقواعد المعمول بها لدى أحد الطرفين المتقاعدين...
4- يجب ألا تنسى المؤسسات المعنية من أي من الطرفين المتقاعدين استعمال الحقوق لها أثناء تشغيلها الخطوط الجوية.

1- The aviation authorities of either contracting party must notify the aviation authorities of the other party …
2- The rules and regulation in force by either contracting party may …
3- The rules and regulations in force by either contracting party shall apply …

4- Organizations appointed by either contracting parties must not abuse the rights assigned thereto during the operation of the airlines …"

The modal "must" is expressed in Arabic in these examples in the two lexical items يجب and على, while "May" is expressed as يجوز. Other Arabic equivalents of "may" that have been identified in various legal texts include يمكن، قد، يجوز، من الجائز. On the other hand, other equivalents of "must" in Arabic are more limited in legal texts, thus ينبغي and يتعين have been found in a very small number of the Arabic legal texts consulted. While the situation with "may" and "must" is quite straightforward and does not present any serious difficulty, translators would more often have to carry out a limited text analysis to define the nature of some seemingly "innocent" verbs, such as تسري in the above example. Other Arabic equivalents of "Shall" that have been identified in various legal texts include. الفعل المضارع – على – يتعهد – يجب – يلتزم

There are very few legal studies for the rules of legal drafting in Arabic. The case has become so bad to the extent that we can find such drafting as the above.

In the researcher's point of view, "shall" will be translated as "الفعل المضارع" and "may" will be translated as "يجوز".

5.3 Syntactic Features of English Legal Texts with Reference to Contracts

Legal English sentences "are, almost without exception, complex" (Crystal and Davy, 1969, p. 203). Legislative texts are known for [...] long and complex sentences, typical use of qualifications to express complex contingencies. In order to be able to understand and, to some extent, translate legislative provisions, whether from one language to another or from one audience to another, one is inevitably required to take into account these difficulties (Bahtia, 1997, p. 208). Syntactically, English legal language, according to Van Dijk (1981, p. 279-288) and other linguists such as Bahtia (1997), Crystal and Davy (1969) and Maley (1994) is characterized by the following features:

1. Nominalization

It is commonly accepted that the extensive use of nominalization is a marked characteristic of legal English (Bhatia, 1997; Crystal and Davy 1969). Nominalization is the use of nouns in preference to verbs. Maley

(1994) states that nominalization is most likely to be used in procedural sections in passive clauses with agent deleted. Crystal and Davy (1969, p. 205) identify the following distinctive features regarding the use of nominals in legal English:

a. There is a marked preference for post-modification in the nominal groups, as in "any installment then remaining unpaid of the rent" (post-modifiers are shown in italics).
b. By contrast, the use of pre-modification other than determiners is refrained.
c. Many of the nominals (for example, proposal, declaration, and termination) are themselves either abstract or not referring to some physical object.

Arabic sentences can be classified into nominal sentences (verbless sentences) and verbal sentences (having verbs). Like written legal English, intensive use of long complicated nominals is a feature of legal Arabic. The following example "مما يقرره المجلس بالإجماع يكون ملزمًا" represents the nominal group as it is introduced by the relative "ما". Arabic also almost uses verbal sentences containing the present tense as in " تسري اتفاقية التنازل عن الحصص".

2. Passives

Legal drafters have a tendency to use passive forms rather than active forms because "passive permits an indirect and formal tone with which lawyers instinctively feel comfortable" (Haigh, 2004, p. 37). However, this can lead to lack of clarity.

Although there is a general tendency to minimize passive constructions in legal Arabic language, passives in Arabic legal register can be rendered as: "تُوقع هذه الاتفاقية في نسخة أو أكثر":

Another example:

- Not later than the first day of November there shall be submitted to the director of the budget for his approval an estimated budget of expenditures.
- تُقدم ميزانية مقدرة بالنفقات للمدير فيما لا يتجاوز الأول من نوفمبر لإقرارها.

The passive structure has been translated in the passive form in Arabic, while the coming sentence is in the passive form in the English language and translated in the active form in Arabic.

- Debts of the assignor may be proved and allowed against his estate.
- يجوز إثبات ديون المتنازل وتحصيلها من تركته.

3. Conditionals

Crystal and Davy (1969) point out that complex conditionals are very common in legal English.

Arabic legal texts are usually crammed with conditionals, stipulative terms, obligations or rights. The most common conditional particle is إذا i.e. "if" e.g. إذا خالف التحويل القوانين السارية

Another example:

- If the Seller delivers the goods before the date fixed, the Buyer may take delivery or refuse to take delivery.
- إذا سلم البائع البضائع قبل التاريخ المحدد، جاز للمشتري أن يستلمها أو يرفض استلامها.

"If" has been translated as "إذا".

4. Prepositional Phrases

There is heavy occurrence of prepositional phrases in legal English, as in "to give time for the payment of any purchase" (Van Dijk, 1981, p. 282).

5. Sentence Length and Complexity

The length and complexity of sentences in legal register in English is seldom found in other registers, and it is another feature of English legal texts that could be in statutes or other legal documents. In the past, English statutes were even more awkward – each section was presented as a continuous and usually unpunctuated single sentence. The retention of the one sentence section is directly traceable to institutional methods of interpretation, since lawyers believe that it is easier to construe a single sentence than a series of sentences (Maley, 1994, p. 25).

Currently English and Arabic legal texts still seem to alternate between the long sentence without punctuations and the more normally punctuated sentence. The following example from the corpus illustrates this:

"وحيث إن الطرف الأول هو شريك ويملك نسبة .....% من رأسمال هذه الشركة تعادل ..... جنيه مصري، وحيث إن الطرف الأول قد أبدى رغبته في بيع جميع الحصص المملوكة له في الشركة المذكورة، وحيث إن هذه الرغبة قد لاقت قبولًا لدى الطرف الثاني، فقد اتفق الطرفان على ما يلي: ....."

(See Appendix A)
And it was rendered as follows:

"**WHEREAS**, the First Party is a Partner in the Company and owns…..% of the Company's capital equivalent to ……..…. Egyptian pounds; WHEREAS the First Party wishes to sell all its owned allotments in the above mentioned Company; WHEREAS this wish was met with the Second Party's acceptance; NOW, THEREFORE, parties hereto agree as follows: (See Appendix AI)

6. Unique Determiners

Crystal and Davy (1969) and Van Dijk (1981) report the use of unfamiliar determiners like "such" and "said". An example:

- The Company reserves the right to make price changes after informing the Customer in writing by a 15-day prior notice of such change.
- تحتفظ الشركة بحقها في إجراء تعديل على الأسعار بعد إخطار العميل كتابة بمدة لا تقل عن خمسة عشر يومًا قبل إجراء هذا التعديل.

"Such" has been translated as هذا.

7. Personal Construction

According to Haigh (2004, p. 37), it is inappropriate to use s/he in a document to refer to a person whose sex is unknown. In such cases, a number of gender-neutral pronouns such as "anyone", "everyone" and "no one" can be used. Legal English avoids the use of personal pronouns that results into the repetition of the nouns, whereas legal Arabic uses personal pronouns freely for more accuracy. Legal English avoids the use of personal construction as in (Texts A and B) by using Seller and Buyer and and as in (Text BI) by using "الشركة المتنازلة والشركة المتنازل لها" ,and as in (Text BII) by using " المتنازل والمتنازل له".

Another example:

- Effective as of the commencement date described in section 2 below, the Company employs the Employee and the Employee accepts employment by the Company upon the terms and conditions hereafter set forth.

- اعتبارا من تاريخ بدء العمل المبين فى المادة 2 أدناه, تعين الشركة الموظف ويقبل الموظف العمل لدى الشركة وفقا للشروط المنصوص عليها فيما بعد فى هذا العقد.

8. Negatives

Multiple negatives are common in legal English register. They are expressed in "unless","except"etc. (Haigh,2004, p.39).

An example:

- Non-Egyptians may not vote in the presidency elections.
- لا يجوز لغير المصريين التصويت فى الانتخابات الرئاسية.

- Double negation has been used in the sentences in both Arabic and English.

9. Unusual Word Order

The word order used in legal documents appears distinctly strange. For example, "the provisions for termination hereinafter appearing or will at the cost of the borrower forthwith comply with the same." Another example, as in (Text AI) from Arabic into English, is "The First Party, by virtue of this Contract and with all the actual and legal guarantees, sells to the Second Party, who accepts, the allotments owned by the First Party in … with all the rights and obligations these allotments comprise, whether these rights or obligations are determined by the law or the Company's Articles of Incorporation." (See Appendix AI).

10. Use of Phrasal Verbs

Phrasal verbs play a large role in legal English. For example, "parties enter into contracts, serve upon other parties, and write off debts", and so on.

11. Use of "Shall", "May", and "May not"

"Shall" is used in official documents to show a law, command, promise, etc. For example, "All payments shall be made by the end of the month"; "shall" here is different from the auxiliary verb which indicates the future tense. "May" is used to refer to the possibility that someone may do something in a certain way, or that something may be done in a certain manner. For instance, "The Second Party may assign this Agreement to the third party without a prior written consent of the First Party". "May not" is used to indicate the opposite, as in "The Second Party may not assign this Agreement to the third party without a prior written consent of the First Party." (Sabrah, 2003, pp. 49-50).

"Shall" can be translated in Arabic as فعل مضارع while "may" can be translated as .2 يجوز لـ. 1. Both of them have different meanings while they are in the positive form, however, they seem to have the same meaning while they are in the negative form. "shall not" can be translated as يحظر or يتعهد بعدم and "may not" can be translated as Arabic negative present or لا يجوز or ألا ....لـ.

An example of "shall not":

- Licensee shall not, without prior written consent of the Licensor, remove any fixtures, furniture, signs, equipment or other property from the Establishment, for a period of thirty (30) days after such termination or expiration.
  - يحظر على المرخص له دون موافقة كتابية مسبقة من المرخص إزالة أية تركيبات أو أثاثات أو لافتات أو تجهيزات أو غير ذلك من الممتلكات من المنشأة لمدة ثلاثين (30) يومًا من تاريخ إنهاء العقد أو انتهائه.

"Shall not" has been translated as "يحظر".

An example of "may not":

- The Chairman may not be removed from office on any other grounds.
  - لا يجوز إقالة رئيس مجلس الإدارة لأى أسباب أخرى.
- "May not" has been translated as "لا يجوز".

12. Discourse-level Features in English

In English legal discourse, the discourse level features substantially differ from those of other forms of discourse in English. The formality of the style and its strict wording design, long sentences, and intention of avoiding ambiguity, make the English legal register a structure of its own,

i.e. a unique fusion of scientific and literary style. According to Van Dijk (1981, pp. 279-288), legal English is characterized by the following features at discourse level:

a. **Anaphora** - although pronouns are avoided in legal registers, repetition of personal subject nouns are used to avoid ambiguity. An example is:

   Effective as of the commencement date described in Section 2 below, the Company employs the Employee and the Employee accepts employment by the Company upon the terms and conditions hereafter set forth

   اعتبارا من تاريخ بدء العمل المبين فى المادة 2 ادناه , تعين الشركة الموظف ويقبل الموظف العمل لدى الشركة وفقا للشروط المنصوص عليها فيما بعد فى هذا العقد.

In the above example, the word "Employee" has been repeated and Arabic did the same by repeating the word "الموظف".

b. **Connection -** archaic terms referring to specific times, places, persons or things such as "hereinafter" and "aforesaid", work as cohesive devices.

c. **Substitution and ellipsis** are of very rare occurrence in legal English registers, yet there are few examples of both cohesive devices. Wh-deletion is seen as a feature of ellipsis.

d. **Lexical cohesion** plays a very important role in the creation of discourse. It is undeniable that the use of vocabulary increases the textuality of discourse. One attempt at studying vocabulary patterns above sentence level is Halliday and Hasan's (1985) description of lexical cohesion. Halliday (1985, p.76) noted that ―lexical cohesion takes place when two words in a text are related to each other in terms of meaning. The two main areas of lexical cohesion are reiteration and collocation.

   Reiteration can be seen as either restating a word in a later part of the discourse by direct repetition or reasserting its meaning by exploiting such lexical relations as synonymy and antonym. Collocation refers to the restrictions on how words can be used together.

13. Discourse-level Features in Arabic Cohesion

Arabic legal language displays a larger tendency to serve lexical cohesion in the form of repetition of the same lexical item, much more than English legal language. An example is:

"يجوز أن تُوقع هذه الاتفاقية فى نسخة أو أكثر, أو أن يوقع الطرفان نسخًا منفصلة منها, لكنها لا تكون سارية المفعول حتى يقوم كل طرف بتوقيع نسخة واحدة على الأقل وتشكل كل نسخة من تلك النسخ أصل هذه الاتفاقية, وتشكل كل تلك النسخ مجتمعة مستندًا واحدًا" ..(see Appendix BI 3.7)

Coherence

Emery (1989, pp. 5-6) defines coherence as "the connectivity of the underlying content of the text" that helps in making the whole text hang together. An example is:

"اتفق الأطراف على أن قيمة الحصص لغرض هذه العملية هي القيمة الدفترية للحصص".
(See Appendix BI, 1.2).

Translating legal texts is a difficult and complex task. There are similarities and differences between the English and the Arabic legal texts. Translation of legal texts involves systemic and cultural components. They influence the understanding of concepts behind the terms. Before the choice of a translational solution, it is necessary to understand the actual purpose of the SL text in order to be transferred to the TL text.

CHAPTER SIX

CONCLUSION

This book deals with the difficulty of translating legal language. It does not focus on the difficulty posed by "the subject matter" rather the focus is on the linguistic difficulty and how to observe the features characteristic of legal style. Moreover, the rules of good legal drafting are of necessity discussed in some detail. In its theoretical part, the researcher focuses on the features and the problems of legal language and its differences from the language of ordinary use, the stylistic features of legal Arabic and legal English, and on the special difficulties in translating legal texts.

The nature of law and legal language contributes, no doubt, to the complexity and difficulty in legal translation. This is compounded by further complications arising from crossing two languages and legal systems in translation. Specifically, the sources of difficulty in legal translation include the differences in sources of law, linguistic differences and cultural differences. All those are closely interwoven.

Legal language is a system- and culture-bound language. Its special style, lexis and syntactic structure depend on the society in question and its legal thinking. Each legal system has its own perception of legal reality, which results in different legal concepts.

The language of law overlaps to a certain extent with the language of ordinary use. Although the legal language uses field-specific terms that are not used outside the legal environment, it uses a vast amount of words in their ordinary meaning and a number of polysemous words that acquire a specialized legal meaning besides their ordinary meaning.

Legal English is a language of long tradition. Apart from English words, many legal terms originate in Anglo-Saxon, French and/or Latin. The original magical nature of law can be still traced in the contemporary legal writing: the sentences are long and complex; many expressions are doubled or tripled by near-synonyms, often alliterated. Despite the efforts of the Plain English Movement, many legal texts still contain old-fashioned expressions and their syntax is improperly punctuated.

Translation of legal texts involves numerous systemic and cultural components. They influence the understanding of concepts behind the

terms. The search for suitable equivalents is very time-consuming. Before the choice of a translational way-out, it is necessary to understand the meaning given by the grammatical relationships according to the rules governing the source language text, and the meaning given by the grammatical relationships according to the rules governing the target language text.

The translator should not only be competent in the relevant terminology: s/he should have a deeper insight into the legal systems of both the source language and the target language. The researcher agrees with Smith (1995, p. 181 as quoted in Cao, 2007, p. 37) that the translator should have basic knowledge of the legal systems, knowledge of the relevant terminology and be competent in the target language specific writing style.

The practical part focuses on two contracts, one written in Arabic, one in English, and their translations into the respective languages. The translations were commissioned to two translation offices, both advertising their competence in legal translation. The translations are analyzed from several perspectives: the overall style (including syntax, the understandability of the target language text and analysis of several translational way-outs).

The translation strategies used by the two translators to deal with problematic areas of legal translation show that, in general, mastering the technical terminology of the source and the target languages is insufficient to make a legal translator competent. Thus, other considerations and features are important in legal translation and should be taken into account when determining translation strategies.

To develop translation competence, translators need instruction in translation theory. Legal translators can benefit from translation training that focuses on the techniques and style of legal translation, which is a relatively modern science. A bilingual lawyer is not necessarily a competent translator of a legal text. Intensive training in the strategies, techniques and translational rules is indispensable from the very beginning of the lawyers attempt to translate such special texts. Translation competence presupposes not only in-depth knowledge of legal terminology, but also thorough understanding of the function of such texts, especially when, for contextual reasons, the contractual force of these texts is being neutralized and the language relationships are the determining factors of what the text declares.

Long convinced that legal translation has to be literal, in the professional sense of the word, translators and linguists frequently focus their attention on terminological and structural issues, syntactically and

semantically. Perceiving legal translation as a communication process, this study argues that the role of the translator depends on the specific language relationships establishing the communicative situation.

However, the purpose of this study is not to lay down specific guidelines as to how to or how not to translate legal texts, but rather to provide linguistic and nonlinguistic criteria to evaluate and discover the features and the characteristics of the legal language, especially contracts.

After comparing the translation strategies used by the two translators so as to deal with problematic areas of legal translation, the study has shown that, in general, mastering the technical terminology of the source and the target languages is insufficient to make a legal translator competent.

Competence in translating a legal text is by nature a double competence. The translator should be trained in both the subject matter and the linguistic features characteristic of the kind of discourse required to be translated.

Recommendations

This is a preliminary step towards a functional analysis of legal translation, which is an admittedly crude field. There are very few legal studies for the rules of legal drafting in Arabic. The researcher has not found any single book that systematically and exhaustively treats the rules of legal drafting on all levels of possible linguistic analysis in Arabic. This book may pose further research questions and further studies on legal translation and drafting and may spur others to discover other aspects of this fascinating topic, giving them tools with which they can begin, and later build on, improve, and offer further fruitful insights.

APPENDIX A

TEXT A

عقد بيع حصص

إنه في يوم ..... الموافق / /2011م، تحرر هذا العقد بين كل من:
أولًا: ..... **(طرف أول "بائع")**
ثانيًا: ..... **(طرف ثانٍ "مشترٍ")**
تمهيد
بموجب شهادة تأسيس رقم ..... بتاريخ / / 20م تأسست شركة ..... "ش.ذ.م.م" وفقًا لأحكام القانون رقم 159 لسنة 1981 ولائحته التنفيذية وبموجب عقد مصدق على توقيعاته رقم ..... لسنة ..... مكتب توثيق الاستثمار وذلك بغرض ..... وقيدت الشركة بالسجل التجاري تحت رقم ..... بتاريخ / / 20 م واتخذت الشركة مركزًا رئيسيًا لها .....
وحيث إن الطرف الأول هو شريك ويملك نسبة .....% من رأسمال هذه الشركة تعادل ..... جنيه مصري.
وحيث إن الطرف الأول قد أبدى رغبته في بيع جميع الحصص المملوكة له في الشركة المذكورة.
وحيث إن هذه الرغبة قد لاقت قبولًا لدى الطرف الثاني. فقد اتفق الطرفان على ما يلي:
أولًا: يعتبر التمهيد السابق وعقد الشركة جزءًا لا يتجزأ من هذا العقد ومتممًا له.
ثانيًا: يبيع الطرف الأول بموجب هذا العقد وبكافة الضمانات الفعلية والقانونية إلى الطرف الثاني القابل لذلك حصته المملوكة له في شركة ..... بكل ما لها من حقوق وما عليها من التزامات سواء تقررت هذه الحقوق أو تلك الالتزامات بموجب القانون أو عقد الشركة.
ثالثًا: يقر الطرف الأول ويضمن للطرف الثاني بأن الحصص المبيعة بموجب هذا العقد مملوكة للطرف الأول ملكية خالصة وكاملة في تاريخ التوقيع على هذا العقد ويقر أيضًا بأنها غير محملة للغير بأي حق من الحقوق شخصية كانت أو عينية أيًا كان سببها أو نوعها أو طبيعتها.
رابعًا: يوافق الطرف الأول على إصدار أي موافقات أو إقرارات تطلبها أية جهة رسمية أو حكومية لنقل ملكية هذه الحصص إلى الطرف الثاني.
خامسًا: تم هذا البيع وقبل من الطرفين مقابل مبلغ ..... للحصص المبيعة سددت إلى الطرف الأول عند التوقيع على هذا العقد ويقر الطرف الأول بأن توقيعه على هذا العقد بمثابة مخالصة نهائية وباتة عن كامل الثمن المدفوع والمذكور بعاليه.
سادسًا: يقر الطرف الثاني ببراءة ذمة الطرف الأول من كافة المديونات أو الالتزامات الخاصة بالشركة من رسوم وضرائب بكافة أنواعها اعتبارًا من تاريخ توقيع هذا العقد. ويقر الطرف الثاني بصفته بالتزامه بسداد كافة ما قد يترتب على هذا المبيع من التزامات.

سابعًا: أصبح الطرف الثاني بموجب هذا العقد شريكًا في شركة ..... ويكون له نفس سلطات واختصاصات وحقوق والتزامات الطرف الأول من تاريخ توقيع هذا العقد.

ثامنًا: كل نزاع ينشأ عن هذا العقد يختص بنظره والفصل فيه محاكم ..... ويتم الفصل فيه طبقاً لأحكام القانون المصري.

تاسعًا: أتعاب تحرير هذا العقد وكذلك مصاريف ورسوم وأتعاب العقد النهائي يتحملها المشتري وحده وكذلك ما قد يستجد من مصاريف تكميلية، وبما ذكر تحرر هذا العقد من ثلاث نسخ بيد كل طرف نسخة للعمل بموجبها عند اللزوم، أما النسخة الثالثة فيتم إيداعها ضمن مستندات الشركة.

طرف أول (بائع) طرف ثانٍ (مشتر)

Text A1

Contract of Sale of Allotments

On this day of ……, .../..../2011, this Contract was drawn up

BY AND BETWEEN:

First: …… **(First Party – Seller)**

Second: …… **(Second Party – Purchaser)**

Preamble

Pursuant to the Certificate of Incorporation No. … dated on ../../20.., ……. was established in accordance with the provisions of Law No. 159 of 1981 and its Executive Regulations, and in accordance with the Attestation of Signatures Contract No. …….. of …….. at the Investment Notarization Office, with the object of …… On../../20.., the said Company was registered at the Commercial Register under No. …….. The Company's Head office shall be at ……

WHEREAS, the First Party is a Partner in the Company and owns…..% of the Company's capital equivalent to ……..…. Egyptian pounds;

WHEREAS the First Party wishes to sell all its owned allotments in the above mentioned Company;

WHEREAS this wish was met with the Second Party's acceptance; NOW, THEREFORE, parties hereto agree as follows:

First: The above Preamble and the Company's Articles of Incorporation constitute an integral and complementary part thereof.

Second: The First Party, by virtue of this Contract and with all the actual and legal guarantees, sells to the Second Party, who accepts, the allotments owned by the First Party in …….. with all the rights and obligations these allotments comprise, whether these rights or obligations are determined by the law or the Company's Articles of Incorporation.

Third: The First Party confirms and warrants to the Second Party that the allotments sold, by virtue of this Contract, are truly and wholly owned by the First Party as at the date of signature of this Contract. The First Party also acknowledges that these allotments are not burdened with or bear any right to any third parties, whether personal or in-kind, for whatever reason, of whatever kind or nature.

Fourth: The First Party accepts to issue any approvals required or declarations which may be requested by any official or governmental authority for the transfer of the ownership of these allotments to the Second Party.

Fifth: This sale was concluded, and accepted by both Parties, in return of the amount of …… for said sold allotments, paid to the First Party upon signature of this Contract. The First Party declares that its signature on this Contract constitutes a final and definite settlement of the full value referred to above.

Sixth: The Second Party acknowledges the release of the First Party from any liability to any debts or obligations of the Company, such as all kinds of taxes and duties, as of the date of this Contract. The Second Party, in its capacity, confirms its obligation to pay all amounts resulting from this Sale.

Seventh: The Second Party, by virtue of this Contract, has become a Partner in …….. and shall have same authorities, rights and obligations of the First Party, as of the date of signature of this Contract.

Eighth :Any dispute, that may arise out of this Contract, shall be referred to, and settled by the Courts of ……. in accordance with the provisions of the Egyptian Law.

Ninth: This Contract was made up of three copies, one for each Party for compliance thereto whenever necessary. The third copy shall be deposited with the Company's documents.

FIRST PARTY (SELLER)

SECOND PARTY (PURCHASER)

Text AII

Contract for the Sale of Allotments

On this day of ……, ../../2011, this Contract is concluded
BY AND BETWEEN:
First: …… (Party of the First Part "**Seller**")
Second: ……. (Party of the Second Part "**Buyer**")

Introduction

According to the Certificate of Incorporation No …….. dated / / 20 A.D., ……., Company "Egyptian Joint Stock Company" was incorporated in accordance with Law No. 159 of the year 1981, executive regulations thereof and in accordance with a duly signed contract No. …… of the year ……., Investment Notary Office for (the purpose of) ……. Company hereof was registered in Commercial Register under No. ……. Dated ***[shall be written with the following format: Month, in letters – Day – Year]*** A.D. Said Company has chosen ….. as headquarters.

Preamble

WHEREAS, the First Party is a partner and owns % of the capital of such Company equivalent to EGP…; and
WHEREAS, the First Party desires to sell all his/her shares in the said Company; and
WHEREAS, Second Party accepts such desire;
NOW, THEREFORE, the parties hereto agree as follows:

First: The previous preamble and the contract of the Company are part and parcel of the present Contract and a complementary thereof.

Second: The First Party sells, in accordance with the present Contract and with all real and legal guarantees, to the second party accepting such all his/her shares in ….. Company including all the rights and obligations thereof whether such rights or obligations are by virtue of law or contract of Company.

Third: The First Party acknowledges and guarantees to the Second Party that all the shares sold in accordance with the present Contract are the sole property of the First Party at the date of signing the present Contract and also acknowledges that such contract is not owned by a third party under any personal or claims of rights of whatever reason, kind and/or nature.

Fourth: The First Party agrees to issue any and all approvals or declarations required by any official or governmental authority to transfer the ownership of allotments thereof to the Second Party.

Fifth: This sale is performed and accepted by both parties in return for EGP ….. for sold shares settled to the First Party on signing the present Contract. First Party acknowledges that his/her signature of the present contract is a final and irrevocable clearance for the total aforementioned paid amount.

Sixth: The Second Party holds the First Party clear from all and any debts and/or obligations related to the dues and taxes of the Company of all and any kind starting from the date of signing the present Contract. The Second Party personally acknowledges his/her obligations to settle all obligations related to such sale.

Seventh: The Second Party, in accordance with the present Contract, has become a partner in …. Company and has the same powers, jurisdictions, rights, and obligations of the First Party from the date of signing the present Contract.

Eighth: …. courts shall be competent to examine and settle any disputes arising out of the present Contract and shall be settled in accordance with the provisions of the Egyptian Law.

Ninth: The present Contract has been drawn up from three copies, each party has a copy to act accordingly. The third copy shall be with the documents of the Company.

FIRST PARTY (SELLER) **SECOND PARTY (BUYER)**

APPENDIX B

TEXT B

ASSIGNMENT OF ALLOTMENTS AGREEMENT

This **ASSIGNMENT OF ALLOTMENTS** AGREEMENT (the "Agreement") is made and entered into effective as of May _____, 2009 (the "Effective Date") by and between:
……. company having its registered address at ……., U.S.A, and principal place of business at 1601 ……., U.S.A (the "Transferor"); and ……., a private company with limited liability, having its corporate seat in …….., and office address at …….. (the "Transferee" and collectively, the "Parties");

Recitals

WHEREAS the Transferor legally and beneficially owns 100% of the issued and outstanding share capital of the Transferee. The Transferor and the Transferee are both indirect wholly-owned subsidiaries of …….. Company, a company organized and existing under the laws of Delaware, United States of America (the "Parent");
WHEREAS the Parent has determined that it is advisable and in the best interests of the Parent and its stockholders to effect an internal legal restructuring involving certain of its subsidiaries (the "Restructuring");
WHEREAS the Transferor is the shareholder of …….., a Egyptian limited liability company, having its registered address at ……. Arab Republic of Egypt, Egypt (the "Subject Company"). The Transferor is owner of 6,300 allotments in the capital of Subject Company 1 (the "Allotments"). The Allotments represent 90% of the entire issued and outstanding allotments in the capital stock of Subject Company;
WHEREAS the Transferor desires to transfer and assign to the Transferee and the Transferee desires to acquire, accept, acknowledge and assume all of the Transferor's right, title, interest and benefit in and to the Allotments,

effective as of the Effective Date, upon the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

Section 1 – Assignment and Transfer

1.1 The Transferor hereby agrees to transfer and assign to the Transferee and the Transferee hereby agrees to acquire, accept, acknowledge and assume the transfer and assignment from the Transferor, of all of the Transferor's right, title, interest and benefit in and to the Allotments, with effect as of the Effective Date.

1.2 The Parties agree that the value of the Allotments for the purpose of this transaction shall be the book value of the Allotments. The Parties agree that the value of the Allotments shall be recorded by the Transferee as nonstipulated share premium.

1.3 The Transferee hereby agrees to become a shareholder of the Subject Company and to be bound by the terms and provisions of the Subject Company's Articles of incorporation, as amended on March 27th 2002, February 19th 2003 and December 18th 2003, as if originally a party thereto.

Section 2 - Warranties

2.1 The Transferor warrants to the Transferee that to the best knowledge of the Transferor the Transferor has good title to the Allotments, free and clear of any liens, charges, pledges, security interests or other encumbrances, and that to the best of Transferor's knowledge the Transferor is free to transfer good title to all the said Allotments to the Transferee.

2.2 The Transferee acknowledges and agrees that, except as expressly set forth in this Agreement (a) the Transferor is not making any representations or warranties, express or implied, with respect to the Allotments, and (b) ALL SUCH ALLOTMENTS ARE HEREBY ASSIGNED ON AN "AS IS," "WHERE IS" BASIS.

Section 3 - General Provisions

3.1 **Beneficial Ownership**. It is the intention of the Parties that the assignment of the Allotments shall be effective as of the Effective Date, from and after which date the Transferee shall be the beneficial owner of the Allotments for all purposes and to the extent that the registered ownership of the Allotments is not transferred to the Transferee as of the Effective Date, the Transferor shall hold the Allotments as nominee or trustee for the benefit of the Transferee until the Allotments have been formally registered in the name of the Transferee. It is the intention of the Parties that all the benefits and burdens of ownership of the Allotments shall transfer to the

Transferee on the Effective Date. To the extent that the transfer of registered ownership of the Allotments to the Transferee is not perfected on the Effective Date or would be contrary to applicable law, the Parties will use their best efforts to provide to, or cause to be provided to, the Transferee, to the extent permitted by law, the rights and benefits associated with the registered ownership of the Allotments and take such other actions as may reasonably be requested by the Transferee in order to place the Transferee, insofar as reasonably possible, in the same position as if the Transferee was the registered shareholder of the Allotments. Without limiting the foregoing and in connection therewith (a) the Transferor will promptly pass along to the Transferee when received all dividends and other benefits derived by the Transferor with respect to the Allotments and (b) the Transferee will pay, perform and discharge on behalf of the Transferor all of the Transferor's obligations with respect to the Allotments, in each case accruing on or after the Effective Date.

3.2 **Transferee's Indemnity.** The Transferee shall indemnify and keep indemnified the Transferor against any and all liabilities, losses, penalties, fines, damages, claims, costs, expenses and legal and professional fees and disbursements incurred, suffered or sustained by the Transferor or asserted against the Transferor in connection with the Transferor holding the Allotments as nominee for the Transferee.

3.3 **Further Assurances.** Each party hereto shall perform such acts, execute and deliver such instruments and documents, and do all such other things as it reasonably can and which are reasonably necessary to accomplish the transactions contemplated in this Agreement (including, without limitation, the transfer(s) of the Allotments contemplated by this Agreement) and/or to otherwise give effect to this Agreement.

3.4 **Governing Law and Jurisdiction.** The laws of the state of Delaware (excluding its rules governing conflicts of laws) shall govern the construction, interpretation and other matters arising out of or in connection with this Agreement (whether arising in contract, tort, equity or otherwise). The Parties agree that any action arising under or in connection with this Agreement shall be brought and maintained in the courts of Delaware.

3.5 **Severability**. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if

the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable. The Parties shall then use all reasonable endeavors to replace the invalid or unenforceable provision(s) by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

3.6 **Entire Agreement.** This Agreement constitutes the final agreement between the Parties, and is the complete and exclusive statement of the Parties' agreement on the matters contained herein. Notwithstanding the foregoing, the Parties contemplate that they may desire to enter into or execute transfer instruments of various kinds consistent with, but in some cases duplicative of, this Agreement in order to effect the transfer and assignment of the Allotments and/or to facilitate the registration of such transfer with local governmental authorities having jurisdiction over the Subject Company. All prior and contemporaneous negotiations and agreements between the Parties with respect to the matters contained herein are superseded by this Agreement.

3.7 **Counterparts**. This Agreement may be executed in one or more counterparts, and by the Parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart and each such counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same instrument.

3.8 **Headings**. The captions, titles and headings included in this Agreement are for convenience only, and do not affect this Agreement's construction or interpretation. When a reference is made in this Agreement to a section or schedule, such reference will be to a section of, or a schedule to, this Agreement unless otherwise indicated.

3.9 **Amendments**. This Agreement may not be amended, supplemented or otherwise modified except by a written document executed by or on behalf of each of the Parties hereto.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

……..	**……...**
By : _____	By : _____
Name: …….	Name: ……
Title: Manager, Vice President	Title: Managing Director
Date: _____`	Date: _____

Text BI

اتفاقية تنازل عن حصص

تسرى **اتفاقية التنازل عن الحصص** هذه ("الاتفاقية") اعتبارا من مايو -------, 2009 ("تاريخ السريان") بين كل من:
إن ..... , شركة ذات مسئولية محدودة بولاية ..... , وعنوانها المسجل هو ..... , ويقع مقر عملها الرئيسى فى .....,, الولايات المتحدة الامريكية ("الشركة المتنازلة")؛
و.....، شركة ذات مسئولية محدودة ويقع مقرها التجاري في .....، وعنوان المكتب هو ..... ("الشركة المتنازل لها"), ويشار اليهما مجتمعين بـ "الطرفان")؛

تمهيد

حيث إن الشركة المتنازلة تمتلك قانونا 100% من حصص رأس المال المصدر والتى لم يتم طلبها بعد الخاصة بالشركة المتنازل لها وكامل الحقوق المرتبطة بها. إن الشركة المتنازلة والشركة المتنازل لها هما شركتان فرعيتان مملوكتان بالكامل وبشكل غير مباشر لنالكو هولدينج كومبانى, وهى شركة مؤسسة وقائمة بموجب قوانين..... "الشركة الأم").
حيث إن الشركة الأم قررت أنه من المستحسن والأفضل لمصالحها ومصالح شركائها اجراء إعادة هيكلة قانونية داخلية تشمل شركات معينة من شركائها الفرعية ("إعادة الهيكلة").
حيث إن الشركة المتنازلة هى شريك فى نالكو مصر المحدودة, وهى شركة مصرية ذات مسئولية محدودة ويقع عنوانها المسجل فى 14 عمارات رامو, طريق النصر, مدينة نصر, القاهرة, جمهورية مصر العربية ("الشركة موضوع هذه الاتفاقية"). تملك الشركة المتنازلة عدد 6300 حصة من حصص رأس مال الشركة موضوع هذه الاتفاقية 1 ("الحصص"). تمثل تلك الحصص 90% من الحصص المصدرة والتى لم يتم طلبها بعد من حصص رأس مال الشركة موضوع هذه الاتفاقية.
حيث إن الشركة المتنازلة ترغب فى تحويل جميع مالها من حق وملكية ومصلحة ومنفعة فى الحصص والتنازل عنها للشركة المتنازل لها التى ترغب فى امتلاك جميع ما للشركة المتنازلة من حق وملكية ومصلحة ومنفعة فى الحصص وتقبل وتقر بذلك اعتبارا من تاريخ السريان بموجب الشروط والأحكام الواردة فى هذه الاتفاقية.
بموجب هذه الاتفاقية يوافق الطرفان على ما يلى:

القسم 1- التنازل والتحويل

1.1 توافق الشركة المتنازلة بموجب هذه الاتفاقية على تحويل جميع ما لها من حق وملكية ومصلحة ومنفعة فى الحصص والتنازل عنها لصالح الشركة المتنازل لها, وتوافق الشركة المتنازل لها بموجب هذه الاتفاقية على امتلاك جميع ما للشركة المتنازلة من حق وملكية ومصلحة ومنفعة فى الحصص, اعتبارا من تاريخ السريان.
1.2 يوافق الطرفان على أن تكون قيمة الحصص لهذه الصفقة هى القيمة الدفترية للحصص. ويوافق الطرفان على أن تسجل الشركة المتنازل لها قيمة الحصص كعلاوة إصدار غير مشروطة.
1.3 توافق الشركة المتنازل لها بموجب هذه الاتفاقية على أن تصبح شريك فى الشركة موضوع هذه الاتفاقية وأن تكون ملزمة ببنود وأحكام عقد تأسيس الشركة موضوع هذه الاتفاقية وتعديلاته الصادرة فى 27 مارس 2002 و19 فبراير 2003 و18 ديسمبر 2003 كما لو كانت فى الأصل طرفا فى ذلك العقد.

القسم 2 - الضمانات

2.1 تضمن الشركة المتنازلة للشركة المتنازل لها حسب معلوماتها بأن الشركة المتنازلة لديها حق ملكية خالص فى الحصص, وأن الحصص خالية من أية امتيازات أو رسوم أو رهونات أو فوائد ضمانات أو أية أعباء أخرى, وأنه حسب معلومات الشركة المتنازلة, فإن للشركة المتنازلة مطلق الحرية فى تحويل حق الملكية الخالص لجميع الحصص المذكورة للشركة المتنازل لها.

2.2 تقر الشركة المتنازل لها وتوافق, باستثناء ما ورد بنص صريح فى هذه الاتفاقية, على (أ) ألا تقوم الشركة المتنازلة بتقديم أى تعهدات أو ضمانات, صريحة كانت أو ضمنية, فيما يتعلق بالحصص و(ب) أنه **تم التنازل عن جميع هذه الحصص بموجب هذه الاتفاقية على "ما هى عليه", و "أينما كانت".**

القسم 3 - أحكام عامة

3.1 **ملكية حق انتفاع**. يعتزم الطرفان أن يسري التنازل عن الحصص اعتبارًا من تاريخ السريان. اعتبارًا من ذلك التاريخ فصاعدا, تصبح الشركة المتنازل لها هو المنتفع من الحصص لجميع الأغراض وحتى إذا لم يتم التنازل عن الملكية المسجلة للحصص للشركة المتنازل لها بحلول تاريخ السريان, وتحتفظ الشركة المتنازلة بالحصص بصفتها أمينًا لصالح الشركة المتنازل لها حتى يتم تسجيل الحصص تسجيلًا رسميًا باسم الشركة المتنازل لها. يعتزم الطرفان أن تُحول جميع منافع الحصص وأعباءها للشركة المتنازل لها فى تاريخ السريان. يتعين على الطرفين بذل أقصى جهدهما لتقديم ما يتعلق بالملكية المسجلة للحصص من حقوق ومنافع أو إصدار التوجيهات لتقديمهما للشركة المتنازل لها بالقدر الذى يسمح به القانون واتخاذ أى إجراءات أخرى قد تطلبها الشركة المتنازل لها على نحو معقول من أجل تمكين الشركة المتنازل لها قدر الإمكان من نفس الوضع كما لو كانت الشركة المتنازل لها هى المساهم المسجل للحصص طالما لم يتم الانتهاء من تحويل الملكية المسجلة للحصص للشركة المتنازل لها من تاريخ السريان أو إذا خالف التحويل القوانين السارية. دون تقييد لما سبق (أ) تقوم الشركة المتنازلة فورا بنقل جميع حصص الأرباح والمنافع الأخرى التى تحصل عليها الشركة المتنازلة بمجرد تلقيها للشركة المتنازل لها فيما يتعلق بالحصص, و(ب) فيما يتعلق بالحصص تقوم الشركة المتنازل لها بسداد وأداء جميع الالتزامات بحق الشركة المتنازلة المستحقة فى كل حالة فى تاريخ السريان فصاعدًا.

3.2 **تعويض الشركة المتنازل لها**: تقوم الشركة المتنازل لها بتعويض الشركة المتنازلة والاستمرار فى تعويضها ضد أى التزامات وخسائر وجزاءات وغرامات وتعويضات ومطالبات وتكاليف ومصروفات ورسوم قانونية ومهنية ومدفوعات تتكبدها الشركة المتنازلة أو تتحملها أو تطالب بها فيما يتعلق باحتفاظ الشركة المتنازلة بالحصص بصفتها أمين الشركة المتنازل لها.

3.3 **ضمانات أخرى** : يقوم كل طرف من أطراف هذه الاتفاقية بتلك التصرفات وتوقيع تلك المستندات والوثائق وتسليمها والقيام قدر استطاعته بجميع التصرفات والتوقيعات المشابهة التى تلزم بشكل معقول لإنجاز الصفقات الواردة فى هذه الاتفاقية (ويشمل ذلك على سبيل المثال لا الحصر, تحويل الحصص الواردة فى هذه الاتفاقية) وخلاف ذلك لإنفاذ هذه الاتفاقية.

3.4 **القانون واجب التطبيق والاختصاص**: تحكم قوانين ولاية ديلاوير (باستثناء قواعدها التى تحكم تنازع القوانين) فحوى هذه الاتفاقية وتفسيرها والمسائل الأخرى الناشئة عنها أو المتعلقة بها (سواء الناشئة عن التعاقد, أو الضرر, أو حقوق الملكية أو خلافه). يوافق الطرفان على أن تقام أى دعوى قضائية تنشأ عن هذه الاتفاقية أو بموجبها أمام محاكم ولاية ديلاوير وأن تظل منظورة حصريا أمام تلك المحاكم.

3.5 **البطلان الجزئى**: إذا قررت إحدى المحاكم ذات الاختصاص أن أى من أحكام هذه الاتفاقية باطل أو غير قانونى أو غير قابل للتنفيذ تظل باقى أحكام هذه الاتفاقية سارية ونافذة المفعول, طالما ظلت البنود والشروط الأساسية فى هذه الاتفاقية سارية وملزمة وقابلة للتنفيذ لكل من الطرفين. يستخدم الطرفان عندئذ مساعديهما المعقولة لاستبدال الأحكام الباطلة وغير القابلة للتنفيذ بأحكام أخرى سارية وقانونية وقابلة للتنفيذ فى أقرب وقت ممكن وبأقرب صيغة ممكنة من الأحكام الباطلة أو غير القانونية أو غير القابلة للتنفيذ.

3.6 **الاتفاقية بالكامل**: تشكل هذه الاتفاقية الاتفاق النهائى بين الطرفين وتمثل الصيغة الكاملة والحصرية لاتفاق الطرفين على المسائل الواردة فى هذه الاتفاقية مع مراعاة ما سبق ينظر الطرفان فى إمكانية إبرام أو توقيع سندات تحويل متعددة الأنواع تتسق مع هذه الاتفاقية وفى بعض الحالات تتطابق معها لإنفاذ تحويل الحصص والتنازل عنها أو لتسهيل تسجيل هذا التنازل لدى السلطات الحكومية المحلية ذات الاختصاص على الشركة موضوع هذه الاتفاقية. تجُب هذه الاتفاقية وتحل محل جميع المفاوضات والاتفاقات السابقة والحالية بين الطرفين فيما يتعلق بالمسائل الواردة فى هذه الاتفاقية.

3.7 **النُسخ**: يجوز أن توقع هذه الاتفاقية فى نسخة أو أكثر أو أن يوقع الطرفان نسخًا منفصلة منها لكنها لا تكون سارية المفعول حتى يقوم كل طرف بتوقيع نسخة واحدة على الأقل وتشكل كل نسخة من تلك النسخ أصل هذه الاتفاقية, وتشكل كل تلك النسخ مجتمعة مستندًا واحدًا.

3.8 **العناوين**: تستخدم العناوين والعناوين الفرعية الواردة فى هذه الاتفاقية للتوضيح فقط, ولا تؤثر على بناء هذه الاتفاقية أو تفسيرها. عند الإشارة فى هذه الاتفاقية لقسم أو ملحق تكون تلك الإشارة لقسم أو ملحق بهذه الاتفاقية إلا إذا ورد نص بخلاف ذلك.

3.9 **التعديلات**: لا يجوز تعديل هذه الاتفاقية أو إلحاق أى ملاحق بها أو تغييرها بأى شكل إلا بموجب مستند كتابى موقع من طرفى هذه الاتفاقية أو من ينوب عنهما.

(تم ترك بقية هذه الصفحة فارغة عمدا)

وبما ذكر أمر الطرفان ممثليهما المفوضين حسب الأصول بتوقيع هذه الاتفاقية اعتبارًا من تاريخ السريان.

الشركة المتنازلة	الشركة المتنازل لها
التوقيع:.....	التوقيع: .....
الاسم:	الاسم:
المسمى الوظيفى: مدير, نائب الرئيس وأمين السر	المسمى الوظيفى: العضو المنتدب
التاريخ:	التاريخ:.....

Text BII

اتفاقية تنازل حصص

تحررت **اتفاقية تنازل الحصص** (ويشار اليها لاحقًا بـ "الاتفاقية") فى .. /2009/5 (تاريخ السريان) بين كل من: شركة.....الكائنة فى ..... الولايات المتحدة الأمريكية ومقرها الرئيسى فى 1061 ..... الولايات المتحدة الأمريكية (ويُشار إليه منفردًا لاحقًا ب "المتنازل").
وشركة .... شركة خاصة ذات مسؤلية محدودة ومقرها الرئيسى فى ..... وعنوان المكتب ..... (ويشار إليه منفردًا لاحقًا بـ"المتنازل له" ويشار إليهم مجتمعين بـ"الأطراف")

تمهيد

حيث إن المتنازل يمتلك 100% من حصص المتنازل له المُصدرة المتداولة شرعًا وقانونًا. يُعتبر كلًا من المتنازل والمتنازل له ممثلين مالكين غير مباشرين لشركة ..... وهى شركة مؤسسة وخاضعة لقانون ولاية ديلاوير بالولايات المتحدة الأمريكية ("الشركة الأم") وحيث إن الشركة الأم قررت أنه من الأفضل ولمصلحة الشركة الأم وحملة أسهمها إجراء اعادة هيكلة داخلية متضمنة بعض من ممثليها المعينين (ويشار إليه لاحقًا بـ"إعادة الهيكلة").
وحيث إن المتنازل يحمل أسهم شركة .... شركة مصرية ذات مسؤلية محدودة ومقرها الرئيسى المسجل فى .... جمهورية مصر العربية (ويشار إليها لاحقا بـ"الشركة محل العقد"). يمتلك المتنازِل 6.300 من الحصص فى رأس مال الشركة محل العقد 1 (ويشار إليها لاحقًا بـ"الحصص"). تمثل الحصص نسبة 90% من الحصص المصدرة المتداولة فى نصيب أسهم الشركة محل العقد, وحيث إن المتنازل قد أبدى رغبته في بيع ونقل وتعيين جميع الحصص المملوكة له إلى المتنازل له وحيث إن المتنازل له يرغب فى حوزة وقبول وإقرار وتقبل كافة حقوق المتنازل وإدارته وحقوقه ومميزاته فى كافة الحصص والتى تسرى من تاريخ سريان هذا العقد وفقًا للشروط المنصوص عليها فى هذه الاتفاقية.
ولذا فقد اتفق الأطراف على ما يلى:

القسم الأول – التعيين ونقل الملكية

1.1 وافق المتنازِل بموجب هذه الاتفاقية على بيع ونقل وتعيين جميع الحصص المملوكة له إلى المتنازَل له والمتنازَل له قبل حوزة وقبول وإقرار وتَقبل كافة المنقولات والتعينات من المتنازِل عن كافة حقوق المتنازِل وإدارته وحقوقه ومميزاته فى كافة الحصص والتى تسرى من تاريخ سريان هذا العقد.

1.2 اتفق الأطراف على أن قيمة الحصص لغرض هذه العملية هى القيمة الدفترية للحصص. كما اتفق الأطراف على أن يسجل المتنازِل قيمة الحصص بوصفها حصص غير مشروطة بأقل من سعر المساواة.

1.3 وافق المتنازل بموجب هذا العقد أن يصبح من حملة أسهم الشركة محل هذا العقد وأن يلتزم بشروط وأحكام عقد تأسيس الشركة محل العقد وفق التعديلات التى أُدخلت عليه فى 27 مارس 2002 وفى 19 فبراير 2003 وفى 18 ديسمبر 2003 بوصفه طرف أصيل فى هذا العقد.

القسم الثانى - الضمانات

2.1 يضمن المتنازِل إلى المتنازَل له أنه على قدر معرفة المتنازَل له أن المتنازل يُدير الحصص إدارة جيدة وخالية من أية التزامات أو تكاليف أو رهن أو التزامات على الأوراق المالية أو أية أعباء وعلى قدر معرفة المتنازل له أن المتنازِل له الحق فى نقل إدارة جيدة لكافة الحصص المذكورة إلى المتنازَل له.

2.2 يقر المتنازَل له ويقبل أنه باستثناء ما تنص عليه هذه الاتفاقية صراحة (أ) لا يقوم المتنازِل بعمل أى تمثيل أو ضمانات صراحة أو ضمنية فيما يختص بالحصص كما (ب) يتم تنازل هذه الحصص بموجب هذه الاتفاقية على أنها " كما هى" و"حيثما هى".

القسم الثالث - أحكام عامة

3.1 حق انتفاع. إنها غاية الأطراف على سريان تعيين الحصص من تاريخ السريان والذى منه وبعد هذا التاريخ يصبح المتنازَل له هو المالك المنتفع من هذه الحصص عن كافة الأغراض ولدرجة أنه لا يمكن نقل الملكية المسجلة للحصص إلى المتنازَل له من تاريخ السريان يحق للمتنازِل الاحتفاظ بالحصص بوصفه حارس لها أو وصي عليها لمصلحة المتنازَل له حتى يتم تسجيل الحصص باسم المتنازَل له رسميًا. إنها غاية الأطراف أن تنتقل كافة مميزات وأعباء ملكية الحصص إلى المتنازَل له من تاريخ السريان. ففى حالة عدم تنفيذ نقل الملكية المسجلة للحصص إلى المتنازَل له فى تاريخ السريان أو يخالف القانون المعمول به يبذل الأطراف كل الجهود لنقلها أو العمل على نقلها المتنازَل له فيما يسمح به القانون والحقوق والمزايا المصاحبة للملكية المسجلة لحصص واتخاذ كافة التدابير الأخرى اللازمة للمتنازَل له حتى يتم اعتبار المتنازل له كيفما يسمح الحال فى نفس المرتبة التى تسمح للمتنازَل له أن يكون حامل الأسهم المسجلة للحصص. دون الحد مما سبق وفيما يتعلق به (أ) ينقل المتنازِل على الفور إلى المتنازِل له كافة أرباح الأسهم والمميزات الأخرى التى يقررها المتنازِل فيما يختص بالأسهم و(ب) يدفع المتنازَل له ويحل محل ويتصرف نيابة عن المتنازِل فيما يختص بالتزامات المتنازِل فى الحصص فى كل حالة تطرأ أو تلحق بتاريخ السريان أو بعده.

3.2 تعويضات المتنازَل له: يعوض المتنازَل له ويضمن تعويض المتنازِل عن كافة المسئوليات والخسائر والعقوبات والغرامات والأضرار والدعاوى وتكاليف والمصروفات والأتعاب المهنية القانونية والتعويضات التى يتحملها المتنازِل أو التى يتم فرضها على المتنازِل فيما يختص بالمتنازِل الذى يمتلك الحصص كوصي عليها لصالح المتنازَل له.

3.3 ضمانات أخرى. يقوم كل طرف من الأطراف بتلك الأعمال وينفذ ويورد تلك الآليات والمستندات ويبذل قصارى جهده فى القيام بتلك الأشياء الأخرى والتى هى ضرورية للقيام بالعمليات المنصوص عليها فى هذه الاتفاقية (متضمنة وغير مقتصرة على تحويل / تحويلات الحصص المذكورة فى هذه الاتفاقية) و/أو تفعيل هذه الاتفاقية بأى طريقة أخرى.

3.4 القانون المعمول به والتحكيم يحكم قانون ولاية ديلاوير (غير متضمنة القوانين التى تحكم تضارب القوانين) كتابة وتفسير والأمور الأخرى التى تنشأ نتيجة أو فيما يختص بهذه الاتفاقية (إما نشأت فى عقد أو تنازل أو أصول أو خلافه). اتفق الأطراف على الفصل فى المنازعات المتعلقة بهذه الاتفاقية أو الناتجة عنها أمام محاكم ديلاوير.

3.5 تجزئة العقد. فى حال تحديد أي محكمة مختصة أن أى من أحكام هذه الاتفاقية غير سارٍ أو غير قانونى أو غير ملزم تظل كافة أحكام هذه الاتفاقية سارية فى حال بقاء الشروط والأحكام الأساسية فى هذه الاتفاقية سارية ومعمول بها لكل من الأطراف. ويبذل الأطراف بعد ذلك كل المساعى المعقولة لتغيير الشرط/الشروط غير السارية أو غير الملزمة بشرط آخر ساري وقانوني ومُلزِم بديل ويكون أقرب ما يمكن للتأثير المعني في الشرط غير الساري أو غير القانوني أو غير المُلزِم.

3.6 الاتفاقية بالكامل. تمثل هذه الاتفاقية الاتفاق الأخير بين الأطراف كما تعتبر النص الكامل والوحيد للاتفاق بين الأطراف فى الأمور المتضمنة فيها. بغض النظر عما سبق قد يفكر الاطراف فى رغبتهم فى الدخول فى أو فى تنفيذ نقل بعض الأدوات المختلفة التى تتماشى مع أو فى بعض الأوقات تزدوج مع هذه الاتفاقية كى يُفَعّل نقل وتعيين الحصص و/أو لتسهيل تسجيل هذا النقل للهيئات الحكومية المحلية المختصة بالشركة محل العقد. كما تلغي هذه

الاتفاقية كافة المفاوضات والاتفاقيات السابقة واللاحقة بين الأطراف فيما يختص بالأمور المتعلقة فى هذه الاتفاقية.

3.7 الأجزاء. قد تتكون هذه الاتفاقية من جزء أو أكثر ومن قِبَل الأطراف في جزء منفصل ولن تكون سارية حتى يتمم كل طرف على الأقل تنفيذ متطلبات جزء واحد ويمثل كل جزء منها أصل من هذه الاتفاقية ولكن يُشكل كل الأجزاء مجتمعين اتفاقية واحدة فقط.

3.8 رؤوس المواضيع. تعتبر كافة التعقيبات والعناوين ورؤوس المواضيع فى هذه الاتفاقية بغرض التوضيح فقط ولن تؤثر على تأويل أو تفسير هذه الاتفاقية. وعند الرجوع فى هذه الاتفاقية إلى أى قسم أو جدول يكون هذا المرجع إلى "قسم من" أو "جدول فى" هذه الاتفاقية ما لم ينص على خلاف ذلك.

3.9 التعديلات. لا يجوز تعديل هذه الاتفاقية أو استكمالها أو استبدالها بأي وسيلة كانت إلا من خلال وثيقة مكتوبة من قِبَل أو نيابة عن كل من أطراف هذه الاتفاقية.

وبما ذُكِر, أوصى كل طرف ممثله المفوض بتنفيذ هذه الاتفاقية من تاريخ سريانها.

بواسطة:..... بواسطة .....
الاسم: الاسم:
الصفة: المدير ونائب رئيس مجلس الإدارة الصفة: المدير الإدارى
التاريخ:..... التاريخ:.....

NOTES

[1] Target Text.
[2] A judge or another local dignitary.
[3] A method of objecting that admits the facts of the opponent's argument but denies that they sustain the pleading based upon them.
[4] (To be informed of, to be made certain in regard to). The name of a writ issued by a superior court directing an inferior court to send up to the former some pending proceeding, or all the record and proceedings in a cause before verdict, with its certificate to the correctness and completeness of the record, for review or trial; or it may serve to bring up the record of a case already terminated below, if the inferior court is one not of record, or in cases where the procedure is not according to the course of the common law. (Black's Law Dictionary)
[5] In English law. This term meant originally the state of having forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, and offence upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law; as distinguished from a—misdemeanor," upon conviction for which no forfeiture followed. In American law. The term has no very definite or precise meaning, except in some cases where it is defined by statute. For the most part, the state laws, in describing any particfular offense, declare whether or not it shall be considered a felony. A part from this, the word seems merely to imply a crime or a graver or more atrocious nature than those designated as—misdemeanors." (Black's Law Dictionary)
[6] To present a demurrer; to take an exception to the sufficiency in point of law of a pleading or state of facts alleged. (Black‘s Law Dictionary)
[7] A bar or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. (Black's Law Dictionary)
[8] سرَقَ منه مالاً يَسْرِقُ سَرَقاً بالتحريك، والاسم السَرِقُ والسَرِقةُ، بكسر الراء فيهما جميعاً. وربَّما قالوا: سَرقَه مالاً. وسَرَّقَهُ، أي نسبه إلى السَرِقةِ . http://www.baheth.info
[9] Black's Law Dictionary
[10] Black's Law Dictionary
[11] Black's Law Dictionary
[12] A "court below" is a lower court through which a case has passed. A case is removed for review from the court below to the court above, or a higher court. The forum where a lawsuit is initially brought is called an inferior court, or the court below. (www.thefreedictionary.com)

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